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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1568

WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., *et al.*,

Petitioners,

v.

ALFRED WARD, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

Petitioners Wind River Indian Education Association, Inc. (hereinafter, WRIEA), a nonprofit Wyoming corporation; Francis Brown, for himself and on behalf of his minor sons Melvin Brown and Joe Brown; and Alberta Friday, for herself and on behalf of her minor sons Johnny High Friday and Western (Gus) Thayer, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Wyoming entered in this proceeding on February 7, 1975.

OPINION BELOW

The opinion of the Supreme Court of Wyoming is reported at 531 P.2d 872. The order denying Petitioners' petition for rehearing is unreported.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1257(3). The judgment and opinion of the Supreme Court of Wyoming were entered on February 7, 1975. Petitioners filed a timely petition for rehearing in the Supreme Court of Wyoming which was denied March 19, 1975. This petition for a writ of certiorari was filed within 90 days of that date.

QUESTIONS PRESENTED

1. Whether a Wyoming constitutional provision which bars distinction or discrimination in public schools based on sex, race, or color may, consistent with the Equal Protection Clause, prohibit the State education agency from establishing a school district in an Indian community on a Federally-recognized, geographically isolated reservation where such district is needed to remedy serious educational damage of prior coercive assimilation?

2. Whether it is a violation of the Equal Protection Clause, the Indian Self-Determination And Education Assistance Act and the Civil Rights Act of 1964 to deny Federally-recognized Indians living in a geographically isolated reservation community in Wyoming their own neighborhood school system and high school when the State has established such districts and schools in comparably sized and situated communities elsewhere in Wyoming?

STATUTORY AND CONSTITUTIONAL PROVISIONS

[Pertinent texts of statutory and constitutional provisions involved are to be found in Appendix D.]

1. Section 1 of the Fourteenth Amendment to the United States Constitution.

2. The Indian Self-Determination and Education Assistance Act, Act of January 4, 1975, S. 1017, P.L. 93-638, 88 Stat. 2203.

3. Act of February 15, 1929, c. 216, 45 Stat. 1185, as amended, 25 U.S.C. 231. (All references to the United States Code are to the 1970 edition, 1973 supplement.)

4. Section 1 of the Johnson O'Malley Act, Act of April 16, 1934, c. 147, 48 Stat. 596, as amended, 25 U.S.C. 452; further amended by Act of January 4, 1975, 88 Stat. 2203.

5. Ch. IV of the Supplemental Appropriations Act for Fiscal Year 1974, January 3, 1974, P.L. 93-245, 87 Stat. 1071.

6. Article VII, §10, Wyoming Constitution, Wyo. Stats. 1957, 1973 Cum. Supp.

7. The Wyoming Education Code of 1969, as amended, §§21.1-67 and 68, Wyo. Stats. 1957, 1973 Cum. Supp.

8. The Wyoming School District Organization Law of 1969, as amended, §§21.1-105 through 21.1-135, Wyo. Stats. 1957, 1973 Cum. Supp.

9. The Civil Rights Act of 1964, Title VI, §601, Act of July 2, 1964, 78 Stat. 252, P.L. 88-352, 42 U.S.C. 2000d.

10. The Indian Education Act, Act of June 23, 1972, 86 Stat. 334, P.L. 92-318, Title IV, 20 U.S.C. 241aa, *et. seq.*

11. 25 C.F.R. 33.2.

STATEMENT OF THE CASE

This is a school reorganization matter from Fremont County, Wyoming, site of Wyoming's only Indian reservation, the Wind River Reservation. It concerns the effort of an Indian community of about 4500 Shoshones and Arapahoes to establish a unified (K-12 grade) local school district and high school. Petitioner WRIEA is a nonprofit corporation which is leading this effort. Its membership includes all residents of the reservation, and it has an elected board chosen at annual meetings. The individual Petitioners are Indian parents and nigh school aged

children from the reservation who have suffered from unresponsive secondary education programs at off-reservation public high schools.[1]

For some twenty years, ever since acquiring school jurisdiction on this 2900 square mile reservation pursuant to 25 U.S.C. 231, the State of Wyoming has failed to operate a high school within the Wind River Indian community. Instead, Indian high school students have been forced from their community to attend either of two off-reservation, urban, non-Indian controlled high schools at Lander or Riverton or to attend distant, out-of-state Federal Indian boarding schools. Both alternatives have left Indians practically powerless over the education of their children. Their voting strength in the

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[1] Interested Respondents with whom Petitioners were aligned below are:

Robert Schrader, Superintendent, Wyoming State Department of Education and member, State Committee on School District Organization (hereinafter, State Committee); Vernon Delgado, member, State Committee; Dan Kinnaman, member, State Committee; Kathryn Townshend, member, State Committee; Edward Hunter, member, State Committee; Wayne Vanderpoel, member, State Committee; V. Harriet McNeil, member, State Committee; Jack Pearson, member, State Committee; Lynn Simons, member, State Committee.

Interested adverse Respondents are:

Alfred Ward, Alfred McAdams, Audrey Ward, Eva McAdams, Ivora Ray, Harlene Sorrels.

Parties whom Petitioners believe are not interested in the outcome of this petition are:

Ed Wagner, Charles Herbst, William Ramage, Robert Peil, Myron Jarvis, Harold Harris, Honey Maller, Fremont County Vocational High School District, Lander School District No. 1, Lawrence J. Geraud, Dr. W.R. Lansing, Dr. R.S. Gossett, Dr. Harold A. Macon, Charles Moore, Thomas M. Hill, Delphine Clair, Carmelita Clair, James A. Farthing.

public high school districts is minimal, and informal means for influencing educational agencies within them are likewise unavailable. Distances up to thirty miles to these off-reservation schools plus cultural differences, non-Indian bias, and unfamiliar teaching styles have made these schools singularly alien to most Indians.

This system for educating Wind River Indian high school students falls within the national pattern of Indian education characterized as coercive assimilation, a practice to force cultural changes upon Indians by immersion in non-Indian schools. "Indian Education: A National Tragedy — A National Challenge," the report of the Special Senate Subcommittee on Indian Education, made part of the record below, (91st Congress, 2d session, no. 501, hereinafter, Report) condemned coercive assimilation of Indians and recommended increased Indian control of education. The Subcommittee's recommendations have led to concerted Congressional action at reform, culminating in 1972 in the Indian Education Act of 1972, 86 Stat. 334, 20 U.S.C. §241 aa, *et. seq.;* and more recently in The Indian Self-Determination and Education Assistance Act, 88 Stat. 2203.

Educationally, the results of coercive assimilation at Wind River, as elsewhere, have been disastrous. Dropouts are estimated to exceed 50% among Indian high school students. In addition, achievement scores are considerably lower than for non-Indians, absenteeism is higher, and so are rates of emotional disturbance and juvenile delinquency. The results are entirely comparable to those for blacks in segregated schools. Meanwhile, again conforming to the national pattern of Indian education, the off-reservation public high schools at Lander and Riverton receive large amounts of Federal aid in the form of Johnson O'Malley money (25 U.S.C. 452) and other programs. The Wind River Indian community, because of geographic location, concentrated population, Federal status, historic community identity, economic ties and self-government in other fields, is appropriate for a separate school district and high school. No other similarly sized or geographically situated community in Wyoming lacks a high school of its own, and most have their own school districts.[2]

WRIEA's efforts to reorganize a unified public school district within the Wind River Indian community began in 1969 when parents representing majority opinion on the reservation decided to make use of new reorganization procedures contained in the Wyoming School District Organization Law of 1969, §§21.1-105 *et seq.*, Wyo. Stats. 1957, 1973 Cum. Supp. As a practical matter it is only through creation of a unified public school district that a prime goal, a public high school in the community, can be achieved. Moreover, were such a unified public school district created by consolidating three presently existing elementary districts encompassing the Indian community, continuity of Indian control over elementary schools (a major factor behind present widespread Indian support of these schools) would

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[2] Data from the State Department of Education shows that at least 30 of 71 Wyoming high schools in 1972-1973 had enrollments less than or equal to that projected for the Wind River Indian community high school (450). 23 of 59 school districts in the State that year had enrollments less than or equal to that projected for the Wind River Indian community district. *Statistical Report Series: Wyoming Public School Data*, January 1973, State Department of Education.

be ensured.[3] A local Indian community public school district and high school are also likely to draw back many of the students now in Federal Indian boarding schools.

To prove the feasibility of operating a high school in their community and to solve pressing immediate educational needs of children not in school, WRIEA late in 1971 received funds from the Bureau of Indian Affairs to operate a small, independent high school on the reservation. In funding the school the BIA insisted that WRIEA pursue its goal of creating a unified public school district within the community as the long range solution to educational problems on the reservation. Later, Congress appropriated construction funds to WRIEA to expand its facilities. (Appendix D-5). This action anticipated transfer of the facilities to a public school district (see legislative history for this appropriation, Appendix E-8).

In March 1973 the Respondent State Committee on School District Organization (hereinafter, State Committee) established under §21.1-111, Wyo. Stats., *supra*, adopted a plan for reorganizing Fremont County school districts. The plan satisfied Petitioners by providing for consolidation of the three elementary school districts. In so acting, the State Committee believed it was extending, through high school, the benefits to Indian children of localized schooling previously re-

[3] The population of the reservation (about 15% non-Indian) is concentrated in the three elementary school districts, which comprise about a third of the reservation's territory. The rest of the reservation is sparsely populated except for two small non-Indian communities north of the elementary districts. The statement of a witness to the contrary at the court hearing in this case which is quoted in the decision below contradicts information in the record on appeal concerning school enrollments in Fremont County as well as data in the Statistical Report, footnote 2, above.

stricted to elementary grades. Apart from the plan, statutory provisions for inter-district transfers and tuition payments (Appendix D-7) leave open the possibility that Indians and others from the reservation will continue to be able to attend either Lander or Riverton high school if they wish. After adoption of this plan, members of an acculturated Indian minority group on the reservation filed a petition for judicial review in the State District Court of Lander, Wyoming pursuant to §21.1-128 Wyo. Stats., *supra*. Although this group claimed that the plan would lead to segregation of Indians, one of its spokesmen, Respondent Alfred Ward, testified that the real basis for the suit was not fear of racial segregation but fear of Arapahoe domination of Shoshones in the new district.

Named respondents in the petition for judicial review were the members of the State Committee, footnote 1. Petitioners intervened in defense of the plan, citing constitutional and Federal statutory bases for creation of an Indian community school district. (Appendix E-6). Throughout the suit the plan was enjoined and has never been implemented. As a result, continuing and irreparable educational and psychological harm is being done to Indian children remaining in unresponsive, off-reservation schools. During the administrative process leading to this law suit and thereafter, Petitioners stressed Federal issues for creating the district. (Appendix E). Petitioners used the following forms for raising these issues: recommendations for or objections to particular proposed reorganization plans for Fremont County; motion for intervention; trial brief; reply brief in the Supreme Court of Wyoming; and petition for rehearing.

On February 14, 1974, after denying Intervenors' (Petitioners') motion for involuntary dismissal at close of Plaintiffs' case, the District Court at Lander, Wyoming

rendered judgment affirming the State Committee's plan in an order set forth in Appendix C. Respondents appealed to the Supreme Court of Wyoming. That court reversed and remanded to the administrative agency. In its opinion, the Supreme Court of Wyoming, per Raper, J., held that Article VII, §10, Wyoming Constitution, prohibits creation of a "separate Indian reservation school district, as done. . . . No distinctive school may be established for Indians, by an agency of the State of Wyoming." 531 P.2d at 882 (Appendix A at 21a-22a). This decision represents a final adjudication of Petitioners' constitutional claim of a right to a local school system and high school, and it is the primary basis for the Court's judgment. State law questions dealt with in the opinion below are subsidiary, procedural (not representing a substantial state interest) or inadequate.[4] The decision bars the State entirely from instituting necessary educational reform for Petitioners and the Wind River Indian community.

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[4] The discussion in the decision below of the State Committee's authority to reorganize Fremont County is now moot. (See, House Bill 132, Act 33, 2-15-75, Forty-ninth Legislature of the State of Wyoming, 1975 Session, (Appendix D-9). In addition, the reference below to the agency's failure to detail its findings and conclusions, 531 P.2d at 880 (Appendix A at 16a, *et. seq.*), represents a departure from prior state decisions involving school reorganization, *Johnson v. Schrader*, 507 P.2d 814 (Wyo. 1973); *Johnson v. Schrader*, 502 P.2d 371 (Wyo. 1972); *Sweetwater County Planning Comm. for Organization of School Districts v. Hinkle*, 493 P.2d 1050 (Wyo. 1972); *Lund v. Schrader*, 492 P.2d 202 (Wyo. 1971); and see, *Cox Broadcasting Corp. v. Cohn*, ____ U.S. ____, 43 L.Ed.2d 328 (March 3, 1975); and, in the circumstances amounts to avoidance by that court of facts in the record necessary to a resolution of the weighty constitutional issues which were presented and which that court then ruled upon anyway.

REASONS FOR GRANTING THE WRIT

I.

PROHIBITING THE WIND RIVER INDIAN COMMUNITY FROM HAVING ITS OWN SCHOOL DISTRICT AND HIGH SCHOOL IN THESE CIRCUMSTANCES RAISES UNIQUE EQUAL PROTECTION QUESTIONS NEVER BEFORE ADDRESSED BY THIS COURT.

This case involves a fundamental question of the scope and meaning of *Brown v. Board of Education*, 347 U.S. 483 (1954). It concerns a collision between two major constitutional principles, integration and self-determination. In essence, the case presents a claim by a distinct, Federally-recognized Indian community with self-governing powers in other fields for the right to extend those powers to education. See, *United States v. Mazurie*, ___U.S.___, 95 S.Ct. 710 (January 21, 1975), which dealt with the definition of Indian country as applied to the Wind River Reservation. The instant case presents a claim that forced amalgamation with non-Indian urban areas outside the Indian reservation community for school purposes deprives its members of equal educational opportunities.

In practical terms the question presented is the nature of the State's obligation to rectify the damaging educational program it now conducts for Indian high school students. In legal terms it is a question of how to read *Brown v. Board of Education* when dealing with a culturally and constitutionally distinct minority group living within a recognized, bona fide community on a Federally-protected Indian reservation. Does that decision command wholesale integration regardless of circumstances? Or, more broadly read, does it command States to provide equal educational opportunities for all citizens in responsive ways based on their unique needs and situation?

Analytically, the case for the first time compels assessment of the relationship between political control and educational quality. While this Court has repeatedly stressed the importance of local control in the American educational scheme, *Milliken v. Bradley*, 418 U.S. 717, 741, 742 (1974); *San Antonio Ind. School District v. Rodriquez*, 411 U.S. 1, 49 (1973); and *Wright v. Council of the City of Emporia*, 407 U.S. 451, 469 (1972), it has never before been asked to balance the principles of local control and integration in a case in which the minority group maintains that forced assimilation has produced damaging educational results. Never before has a claim been made that coercive assimilation violates the Equal Protection Clause. *Wisconsin v. Yoder*, 406 U.S. 205 (1972), involved a related claim that compulsory school attendance violated Amish religious freedom, but that case did not reach an issue over the State's obligation to shape school boundaries to meet the needs of a cultural minority. Underlying the claim is an Indian belief differing radically from that of other racial groups that only by remaining distinct can they be assured of receiving equal opportunities and resources. Congress agrees, and Indian self-determination is now established Federal policy, a major departure from the assimilationist termination policy of the past. (Appendix D-2 and 11).

The issue turns on perceptions revealed by a Lander high school guidance counselor in a written statement found in the record. After generally blaming Indian parental permissiveness and laziness for the disastrous educational failures among Wind River Indian students, the counselor writes:

> As a result of the Indians' cultural lag in our environment, they constantly face failure in our schools and many other very competitive situations which they attempt.

(R.A. 436)[5] Until Indian communities have a chance to call schools their own in the same way non-Indian communities do, it is doubtful they can be provided equal educational opportunities. In this sense, the case concerns the constitutional force in these circumstances of this Court's statement in *Milliken v. Bradley*, 418 U.S. at 741-742:

> No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.

Perceptually, this case calls for a correct assessment of past denials of self-determination to the Wind River Indian community. As Dr. Donald A. Erickson of the University of Chicago, an expert on minority group education and a witness for the Amish in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), stated in the instant case:

> It seems to me that coercive assimilation and coercive segregation say the same thing to the individual. When you segregate him coercively you say to him, "I don't like the way you are, and I don't want to associate with you," and when you try to assimilate him coercively you say to him, "I don't like the way you are, consequently I'm going to change you whether you want to be changed or not." In these respects, at least, I think the two mechanisms produce a similar impact on the child.

(Tr. 270-271)

Where this policy of forced behavior is carried out through minority exclusion it is called segregation. Where

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[5] "R.A." refers to the administrative record on appeal; "Tr." refers to the transcript of the court hearing which preceded the District Court's judgment.

it is carried out through forced inclusion it is called coercive assimilation. Of legal import is the common effect of both forms of discrimination. *Brown v. Board of Education*, 347 U.S. at 494. Accordingly, forcible acculturation of historically and culturally distinct Indian communities should, like its converse, segregation, trigger an obligation on the part of the State to take affirmative remedial action. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). We have here a tragic record of educational failure brought about by State action designed to remake Indians in the white man's image. If local schools are educationally justified for others in Wyoming, must they not be provided as well to an Indian community whose need for them is perhaps even greater? This Court has held that States, once having undertaken to provide public education, must provide responsive educational programs for all where possible, especially where, as here, Federal funds are involved. See, *Lau v. Nichols*, 414 U.S. 563 (1974), which held the San Francisco school system in violation of 42 U.S.C. 2000d for failing to provide special language programs for Chinese-speaking students. And see, *Morton v. Mancari*, 417 U.S. 535 (1974), in which the Bureau of Indian Affairs employment preference for Indians was upheld in the face of a Fifth Amendment challenge by non-Indian employees. In education the special Indian need has been identified as self-determination, just as for BIA operations the need, in the words of this unanimous Court, is for "participation by the governed in the governing agency." *Morton v. Mancari*, 417 U.S. at 554. Indeed, *Mancari* is of special interest because it controls the question of what kind of classification the State Committee actually made in adopting its plan, a racial classification or one, similar to that made by the BIA, based on educational, cultural, and

constitutional factors resting on the unique status of Federally-recognized Indians. *Mancari, supra*, at 553-554.

In this perspective the decision in *North Carolina State Board of Education v. Swann*, 402 U.S. 43 (1971) becomes important. There a statute prohibiting classification of students by race for purposes of school assignment was held violative of the Fourteenth Amendment because it perpetuated a dual school system. Here, under the interpretation of the Supreme Court of Wyoming, Article VII, §10, Wyoming Constitution, would have the unconstitutional effect of perpetuating coercive assimilation. And see, *McDaniel v. Barresi*, 402 U.S. 39, 41 (1971), where a Georgia Supreme Court decision enjoining a desegregation plan for violation of the Equal Protection Clause "by treating students differently because of their race" was itself reversed because it contradicted *Green v. County School Board*, 391 U.S. 430 (1968).

Along with these reasons for granting the writ, the Court should do so because it has yet to apply *Brown v. Board of Education* to Indians. Indians are a unique American ethnic group and for that reason deserve a careful application of equal protection law. *United States v. Mazurie*, 95 S.Ct. 710 (1975); *Morton v. Mancari*, 417 U.S. 535 (1974); and *Worcester v. Georgia*, 6 Pet. 515 (1832). Although this Court and lower Federal courts have dealt with segregation problems of blacks, *Brown v. Board of Education*, 347 U.S. 483 (1954), of Spanish-Americans, *Cisneros v. Corpus Christi Ind. School District*, 467 F.2d 142 (5th Cir. 1972), cert. den. 413 U.S. 920 (1973), reh. den. 414 U.S. 881 (1973), and of Chinese-Americans, *Lee v. Johnson*, 404 U.S. 1215 (1971), they have never done so for Indians. In the only reported Federal case involving allegations of discrimination by a public school district against Indians, the issue

of segregation was not raised even though several schools in the district were predominantly Indian. *Natonabah v. Board of Education of Gallup-McKinley County School District*, 355 F. Supp. 716 (D.N.M. 1973). State cases involving issues of school discrimination against Indians are old and scattered. *Piper v. Big Pine School District of Inyo County*, 193 Cal. 664, 226 Pac. 926 (1924); *Crawford v. District School Board*, 68 Or. 388, 137 Pac. 217 (1913); *McMillan v. School Committee*, 107 N.C. 609, 12 S.E. 330 (1890). A case from Montana in 1933 involved reorganization of a school district on an Indian reservation but did not reach equal protection issues. *Grant v. Michaels*, 23 P.2d 266. None of these cases posed a conflict between Indian self-government and racial balance.

In short this case should be heard because it requires application of *Brown v. Board of Education* to a unique American ethnic and cultural group and because it poses a novel question of the balance between two fundamental principles, integration and self-determination. Previous decisions by this Court, including *Milliken*, *Rodriguez*, and *Wright*, recognized the importance of local school control. What these decisions fail to do is extend this principle to the level which may be required here: That in appropriate circumstances, where educational, cultural and geographic factors are compelling, it is a violation of the Equal Protection Clause not to provide local school systems.

II.

THE ISSUES INVOLVED ARE OF VITAL IMPORTANCE TO REFORM OF INDIAN EDUCATION.

The major cause of widespread Indian education failure is Indian powerlessness. In the words of the Special Senate Subcommittee on Indian Education:

> At the heart of the matter, educationally at least, is the relationship between the Indian community and the public school and the general powerlessness the Indian feels in regard to the education of his children. (Report, *supra*, p. 24)

In response, Congress and the Executive Branch have joined in significant policy changes. Self-determination offers a firm basis for continued Indian self-expression within a framework avoiding the dangers of termination. See, e.g., *McClanahan v. Arizona State Tax Com'n*, 411 U.S. 164 (1973), which dealt with a State's right to tax the income of Indians living and working on a reservation. The parameters of Federal Indian education policy now include two major points:

1. The Federal Government favors Indian education in public schools. 25 C.F.R. 33.2. (Appendix D-12). As a result over two thirds of all Indians attend public schools.

2. At the same time, recognizing the necessity for Indian school control, Congress has mandated a policy of self-determination in education for American Indians. As a result Indians are acquiring increasing control over Federal Indian schools and over Federal funds for their benefit in public schools.

If allowed to stand, however, the decision below will pose a dilemma. While Congress and many Indians consider self-determination a crucial need, there may be no practical way to achieve it in public school systems.

Indians needing political restructuring to achieve equal educational opportunities would have no choice but to reject State school jurisdiction and opt for the Federal umbrella. Only then, under 25 U.S.C. 231 and The Indian Self-Determination and Education Assistance Act, could they hope to regain real influence over their children's education. But this influence would have been purchased at a price, the price of abandoning an important avenue of intercourse with the States in which they live and are citizens. Already Indians control public school districts on reservations in several States. See M. Szasz, *Education and the American Indian: The Road To Self-Determination, 1928-1973*, University of New Mexico, 1974, and D. Rosenfelt, "Indian Schools and Community Control," 25 Stan. L. Rev. 489 (1973). Unless the decision below is reversed, however, these accommodations within public school systems may be threatened. Indeed, so may the entire self-determination scheme recently enacted by Congress.

In short, unless the Equal Protection Clause is found to protect Indians against coercive assimilation, Federal policy in Indian education may be thwarted. Unless States are told that Indian political influence is of vital importance in Indian education, Indians may be forced to retreat to remote ethnic pockets on reservations. The question is whether mechanisms can be worked out to achieve cultural pluralism, a system in which ethnic pride, identity and values—so important to Indians—can be maintained, while protecting Indian access to the economic and social life of the country. It is a question of the meaning of Indian citizenship. Since colonial times this nation has been engaged in an internal debate about how to organize itself to accommodate the diverse peoples who inhabit it. The debate continues, and it is no accident that it centers on education, for when a community begins to question the education received by its

children it is really asking about its place in the world. Indians have now entered this debate. They have a contribution to make in furthering it. They should be heard.

CONCLUSION

For these reasons a writ of certiorari to review the judgment and opinion of the Supreme Court of Wyoming should issue.

Respectfully submitted,

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June 12, 1975

APPENDIX A

IN THE SUPREME COURT OF THE
STATE OF WYOMING

LAWRENCE J. GERAUD, et al., Appellants, (Petitioners below), v. ROBERT G. SCHRADER, et al., Appellees, (Respondents below), and WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., a nonprofit Wyoming corporation, et al., Appellees, (Intervenors below).	)	OCTOBER TERM, A.D. 1974 February 7, 1975 No. 4389
ALFRED WARD, et al., Appellants, (Petitioners below), v. ROBERT G. SCHRADER, et al., Appellees, (Respondents below), and	)	No. 4390 No. 4391

WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., a nonprofit Wyoming corporation, et al.,

Appellees,
(Intervenors below),

and

FREMONT COUNTY VOCATIONAL HIGH SCHOOL DISTRICT and LANDER SCHOOL DISTRICT NO. 1,

Appellants,
(Second Intervenors below).

Appeals from the District Court of Fremont County, the Honorable Paul T. Liamos, Judge.

Frank P. Hill, and Richard I. Leedy, of Hettinger and Leedy, Riverton, for appellants, Lawrence J. Geraud, et al., Case No. 4389.

W. A. Smith, of Smith & Simonton, Lander, for appellants, Alfred Ward, et al., Cases 4390 and 4391.

Harold E. Meier, of Meier and Gist, Lander, for appellants-second intervenors, Case 4391.

David B. Kennedy, Attorney General, and Jerome F. Statkus, Assistant Attorney General, Cheyenne, for appellees, Robert G. Schrader, et al., Cases 4389, 4390 and 4391.

H. Clandillon Phibbs II, Jackson, Michael P. Gross, Henniker, New Hampshire, and John Forhan, South Bend, Indiana, for appellees-intervenors, the Wind River Indian Education Association, Inc., et al., Cases 4389, 4390 and 4391.

Before McEWAN,[1] C. J., GUTHRIE,[2] McCLINTOCK, RAPER and THOMAS, JJ.

RAPER, Justice.

While there are a number of reasons why the court cannot approve the action of the state committee for school district organization, one of several of which would be dispositive of the case, as later in this opinion disclosed, it is felt by the court that a decision confining itself to a single reason or issue would not be useful in the future reorganization of Fremont County. Before turning to the primary questions, which we decide, there should be some narrative generally outlining the history of the Fremont County long-drawn-out efforts to become reorganized under the mandate of the Wyoming School District Organization Law of 1969, §§21.1-105 through 21.1-135, W.S.1957, 1973 Cum.Supp.

Fremont County has 11 school districts. Under the School District Organization Law, the Fremont County Planning Committee in June, 1971, presented its first plan of reorganization of the school districts of that county. Three other plans were subsequently presented, all of which were rejected by the state committee for various reasons. The court will not attempt to describe each plan, but through the opinion, as appropriate, may mention some pertinent features. The last plan proposed was rejected by the state committee on March 2, 1973. On March 30, 1973, the state committee made a decision and order creating its own four-district plan and directing that it be carried into effect. It is from this order and

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[1] Resigned after oral argument to accept appointment as District Judge, Fourth Judicial District, Wyoming.

[2] Chief Justice at the time of approval and filing of the opinion.

decision of the state committee that two groups of citizens and taxpayers in Fremont County appealed first to the district court and with the intervenor school districts, now to this court, from the judgment of the district court.

The district court permitted the Fremont County Vocational High School District and the Lander School District No. 1 to intervene, purportedly pursuant to Rule 24, W.R.C.P. Section 21.1-128 provides that:

> "An appeal may be taken from any final decision of the state committee by any citizen or taxpayer of the territory involved to the district court of any county in which the proposed new district lies. Such appeal shall be heard promptly and shall be governed by the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure. * * *"

A school district is not a citizen nor a taxpayer. Its motion for intervention is no more than a petition for judicial review, regardless of the label by which it did get into this proceeding. During the course of the trial held by the district court, it was treated in all respects as an appellant. A school district has no standing in an appeal involving a petition for review of administrative action under the specific terms of the Wyoming School District Organization Law of 1969. A school district cannot do indirectly that which it could not do directly. To prosecute an appeal under the guise of an intervention is an improper application of Rule 24, W.R.C.P. in the presence of a specific statute limiting those who may contest school reorganization. It is interesting to note that the motion to intervene was filed almost a year after the state committee's decision and order. Time for appeal is within 30 days after the final decision of an agency.

Rule 72.1(d), W.R.C.P. The back door is not available when the front door is closed.

The right of an appeal is a privilege rather than a right.

> "* * * It is well settled that in the absence of a direct constitutional requirement the right of appeal does not exist unless expressly conferred by statute. The right to have a judgment of an inferior tribunal reviewed by writ of error or appeal is not a natural or inherent right. It pertains merely to the mode of judicial procedure or the remedy. Unless it is guaranteed as a matter of right in the constitution, the Legislature has power to pass laws not only regulating the mode of proceeding, but limiting the cases in which the right may be exercised. * * *" Mau v. Stoner, et al., 1905, 14 Wyo. 183, 193-194, 83 P.218, 219.

The legislature has authority to abridge or extend the right of appeal at its discretion and can determine in what cases and under what circumstances appeals may be taken, as well as regulate the manner of appeal. 4 Am.Jur.2d (Appeal and Error) §6, pp. 536-537.

Intervention by the Wind River Indian Education Association, Inc., a private entity, and various citizens of the Indian community was of a different stripe in that these intervenors were either a private entity or citizens and fit the statutory requirement of "citizens or taxpayers," and there was no special statute which would impose a restraint upon use of Rule 24, W.R.C.P., pertaining to intervention. They were not appealing. Those taking the side of the appellees were more in the nature of amicus curiae.

The district court improperly permitted and conducted a trial type hearing on issues of a legislative nature in this "non-contested" case. School district reorganization pro-

ceedings are non-contested cases. Lund v. Schrader, Wyo. 1971, 492 P.2d 202, 209. In Johnson v. Schrader, Wyo. 1972, 507 P.2d 814, 817, the court decided that the reorganization process is a delegated legislative function and such factor, along with it being a non-contested case, negative the necessity of a trial type hearing. The court in Johnson, just cited, refused to permit the taking of evidence by the district court, because this is an imposition by the courts upon the legislative function delegated to the county committee and the state committee. If there was any further evidence to have been taken, it should have been remanded to the state agency having that function, and that function after December 20, 1971, as will appear later, rested solely with the county committee. If, after an appropriate hearing on a motion showing the necessity for consideration of further matter or facts, the court found that all pertinent material matter or facts had not received the attention of the administrative agency, then the case should have been remanded to the proper committee authorized to carry on the organization function, to receive and consider the evidence, and revise or confirm its decision, within the authority delegated to it, within its judgment. This delicate relationship between the judicial, executive and legislative departments must be meticulously protected.

Without disturbing the court's views in Lund v. Schrader, supra, or Johnson v. Schrader, 507 P.2d 814, that the School District Organization Law of 1969 does not suggest the holding of trial type hearings before the state or county committees, we must confine ourselves to the facts of those cases, where there was apparently no disputed factual issue. Davis, Administrative Law Treatise, 1970 Supp., §7.01, p. 301, declares that, "The basic principle is that trial procedure is required for—and

only for—issues of fact, not for issues of law, policy, or discretion." We only add that there may be an occasion to use a question, answer, cross-examination and other evidence type of approach to settle a disputed fact—a pivotal statistic, for example.

The transcript of the court hearing consists of a castigation of the State Director of School District Reorganization, authorized by §21.1-112 to assist the state committee in carrying out its power and duties; testimony of a witness as to the number of Indians in boarding schools, about which there was no dispute; testimony from the project director of the Wyoming Indian High School about its facilities, operation, financing, future plans and ownership of the lands upon which located; and, testimony from a Shoshone Indian who testified about the history of the school system on the reservation and tribal council operation of the reservation, there being one for the Arapahoes and one for the Shoshone Tribe, the Arapahoe's council favoring the state plan, the Shoshones opposing it.

The last mentioned witness pointed up the fact that proposed District 3 did not cover the whole Wind River Indian Reservation. In the northwestern area alone there are 500 to 600 Indian families sending their children to schools outside the proposed Indian school district. This particular Shoshone did not like the arrangement because of the probability that the district would be dominated by the Arapahoe tribe.

The trial judge during the court proceeding further heard the testimony of a superintendent of a school district outside the reservation, to tell about its academic program, counseling program, and, generally, its excellent on-going ability to serve its present area, without being unified; an Indian parent, member of an interested

parents' organization, to endorse the proposition that a public school in Lander was better than an Indian school; undisputed evidence about the number of mining claims in Fremont County, to show relative mineral wealth; the principal of a junior high school in Lander, to show the financial situation of several of the districts to justify a shift in the assessed valuation of the Beaver Creek Oil Field at a descending rate; an expert on Indian education, to espouse the wisdom of the state plan (125 pages of a 363-page transcript); an Arapahoe Indian, in favor of the Indian reservation district; and, an Episcopal priest, to explain the deed from his church to the Wind River Indian Education Association, Inc. and that some Indian children felt "ripped off" in off-reservation public high schools.

All of this information adduced was material for a school organization committee, but not a court except on review of what the organization committee did with it. It was offered and received to "supplement the record." Rule 72.1(h), W.R.C.P., states:

> "If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material, and there was good reason for failure to present it in the proceeding before the agency, the court in contested cases shall order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may adhere to or modify its findings and decision after receiving such additional evidence, and shall supplement the record to reflect the proceedings had and the decision made. Supplemental evidence may be taken by the court in cases involving misconduct of some person engaged in the administration of the law affecting

> the decision. In all cases other than contested cases additional material evidence may be presented to the court."

While the first Johnson v. Schrader case, Wyo. 1972, 502 P.2d 371, 376, held that the only limiting factor for presenting additional evidence in uncontested cases seems to be materiality, it must be kept in mind that the later Johnson v. Schrader case, 507 P.2d 814, 817, wiped out that part of the case and held that a district court should not determine issues of a legislative nature when a state agency is charged with that delegated perspective and function. We reaffirm that position. If there was an authorized agency to which the case could have been remanded, that is what the trial court should have done. All of the evidence it heard was properly for the ears of the agency.

Questions have been raised by appellants that no notice was afforded of any hearing before the state committee or, at least if it was received, it was more accidental than on purpose. The position taken by the state committee is that there need be no notice because the state committee is in a review capacity and since not required by specific statute, need not give notice, or its position is that even though there is no required form of notice, in fact, word was disseminated and all those interested were award that there was a hearing and they could have been present. In any event, the record indicates that there was apparently no formal type of notice given of any hearing and the matter of notice was on a pretty loose basis. The challenge is, of course, that due process was not afforded before the adoption of the state committee plan.

The school reorganization act does provide for notice and a hearing before the county committees in the

formulation of any plan which it may adopt and forward for approval to the state committee. §21.1-118(b). When the state committee shifted over to its position of not being an approving agency and became an originating agency, was it required to give notice and opportunity for hearing? No statutory notice was provided for such event. This proposition was not in any of the previous school district cases under the organization act of 1969 because none of them had to do with the state committee in a reorganization-originating role. The query, however, has been settled in Marathon Oil Co. v. Welch, Wyo. 1963, 379 P.2d 832, 833, where it was held that statutes authorizing subordinate boards to create and alter school districts are not invalid for failure to require notice and hearing, and a hearing is not necessary where not required by statute.

Section 21.1-113, under the 1969 act, was in the following words:

> "If by December 1, 1971, an approved plan has not been filed for any territory in any county or counties, then the state committee is authorized to reorganize such territory into a unified school district or districts or to combine such territory with any contiguous unified district or districts. In such event, the state committee shall by December 20, 1971, designate the number of trustees and the trustee residence areas for such unified school district. The county clerk shall call an election for electing an initial board of trustees on or before January 10, 1972, as if said unified district had been established under section 112(g) of this chapter." (§21.1-112(g))

Chapter 264, S.L. Wyoming, 1971, in its title, described the chapter as "AN ACT to amend and re-enact Subsection (b) of Section 109, Chapter 111, Session

Laws of Wyoming, 1969, to include elementary schools, principally located within the Wind River Indian Reservation, in unified school districts." Section 1 of the chapter then goes on to provide that §21.1-109(b) is amended to read, "The entire state shall be divided into unified school districts, any county which has been delayed by previous statutory exemptions may have until January 1, 1973, to complete its organization." That language is clumsy and not grammatically correct, but understandable.

The state committee wants us to hold that this amends §21.1-113 by implication and authorizes the state committee to reorganize Fremont County any time after December 20, 1971, and asserts that it was only an insignificant, minor inadvertence on the part of the legislature, to not so state. We are not inclined to accept this invitation to nunc pro tunc read a crystal ball.

Section 22.13, p. 139, Volume 1A, Sutherland, Statutory Construction (Sands, 4th ed.), talks about amendment by implication:

> "An implied amendment is an act which purports to be independent of, but which in substance alters, modifies, or adds to a prior act. To be effective, an amendment of a prior act ordinarily must be express. Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases. * * *"

When doing a post mortem on the demise of the state committee's authority to reorganize a county school system, we must observe that all of §21.1-113 was permitted to die a natural death. It just quietly expired. The surviving family of the reorganization act is still complete, active and workable. The deadline for reorganization was removed completely from that section and the

whole authority for devising a county plan given the county, with the right to approve or reject remaining in the state committee along with its privilege of recommending changes to make a plan acceptable. §21.1-112.

The courts must determine legislative intent from statutory language and not conjecture. Mahoney v. L.L. Sheep Co., 1958, 79 Wyo. 293, 302, 333 P.2d 712, 715. Where the language of a statute is plain, unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory construction, and the court has no right to look for and impose another meaning. Druley v. Houdesheldt, 1956, 75 Wyo. 155, 160, 294 P.2d 351, 352, reh.den. 75 Wyo. 155, 296 P.2d 251. Courts will not usurp the power of the legislature by deciding what should have been said. Barber v. State Highway Comm'n., 1959, 80 Wyo. 340, 351, 342 P.2d 723, 725.

The question may be asked, how can this court declare the state committee out of the business of originating plans and then remand—which it will do—to the Fremont County committee, established pursuant to §21.1-114, which was given until January 1, 1973, to complete its organization? It did submit its final plan prior to that date, but there has been no approved plan, so it does not have a successor planning committee, as contemplated by §21.1-134:

> "When all of the territory of the state is included in unified school districts, the boards of trustees of the unified districts in each county shall constitute a committee with the powers and duties of the former county committees. Such committee may submit to the state committee plans proposing organization of school districts which conform to the criteria and procedures set forth in this chapter, provided that

> the time limits provided by this chapter shall not apply to any such proposed further organization."

Fremont County is the last county in the state not reorganized. Since no successor committee can yet be qualified, then the county committee now in existence will be holding over pursuant to Art. VI, §16, Wyo. Const.:

> "Every person holding any civil office under the state or any municipality therein shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified, but this shall not apply to members of the legislature, nor to members of any board or assembly, two or more of whom are elected at the same time. * * *"

A county committee is neither a "board" nor an "assembly." A board has a management function. State v. Independent School District, 109 N.W.2d 596, 601, 260 Minn. 237; Commissioners of State Ins. Fund v. Dinowitz, 39 N.Y.S.2d 34, 38, 179 Misc. 278. An "assembly" is a legislative body, as used in the Wyoming Constitution, with full decision-making authority. A "committee" is a subordinate body charged with investigation, considering and reporting to a parent body on a particular subject, leaving the parent body to act. Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., 69 Cal.Rptr. 480, 486. See Webster. The state committee is in fact a board made up of the state superintendent of public instruction and the State Board of Education (§21.1-111), having both management and final authority to act. §21.112(g). The county committee can only investigate and recommend.

Ballantyne v. Bower (1909), 17 Wyo. 362, 363, 99 P. 869, 871, approved language from cited cases, that the words "civil office under the state" import an office in

which is reposed some portion of the sovereign power of the state, and, of necessity, having some connection with the legislative, judicial or executive department of the government. All officers whose duties are prescribed by general law, however trivial, perform their own particular portion of the business of the state. The levying and collection of taxes are state matters. So are all things connected with the state system of schools, construction and maintenance of public highways, and preservation of the peace; all who have parts to perform in the general scheme are officers holding under the state, if their engagement rises to the dignity of an office, rather than a mere employment.

The county committee members hold an office of responsibility and dignity, even being required to take an oath for the faithful performance of their duties. §21.1-127. Important legislative functions as before noted, are delegated to them.

This court had no problem in March, 1973, after the statutory deadline, remanding Johnson v. Schrader, 507 P.2d 814, to the county committee to do what it had been directed to do by the trial judge. That action was taken, without comment, by the court.

The appellants from School District No. 21 and School District No. 24, being citizens and taxpayers of those districts, ask the court to approve the four-district plan, which had been submitted by the county committee for school district organization, but rejected by the state committee. The court has examined the plans of all those submitted by the county committee and discovers that all are deficient in their findings and conclusions, in that there is a failure to abide by the direction in Pan American Petroleum Corp. v. Wyoming Oil and Gas Conservation Comm'n, Wyo. 1968, 446 P.2d 550, 555,

and repeated in State Board of Equalization v. Kansas-Nebraska Natural Gas Co., Wyo. 1969, 457 P.2d 963. It is insufficient for an administrative agency to state only an ultimate fact or conclusion, but each ultimate fact or conclusion must be thoroughly explained in order for a court to determine upon what basis each ultimate fact or conclusion was reached. The court must know the why. This is extraordinarily important in this particular case because of the mass of factual data, expressions from so many people at the county hearings, plus testimony (10 volumes plus 10 depositions and, when stacked, measured about two feet in height).

It is not an obligation of a reviewing court to dig into all of the detailed information gathered in the comprehensive studies made by the county committee as well as the state committee and determine the basis for an ultimate fact. It is the duty of an administrative agency to point out in its decision how it arrived at its final facts and conclusions. There may or may not be formed, a valid syllogism.

Every one of the plans submitted contain only a statement of the statutory words with a conclusion that th plan meets such criteria. For example, each committee has, only as a finding, stated the statutory language of the first criteria set out in §21.1-109, in somewhat the following fashion, "The unified school districts are organized as efficient administrative units considering primarily the education, convenience and welfare of the children." Why? How?

For a further example, it is difficult to reason—now taking a look at the state plan—why proposed District No. 1 should have an assessed valuation of $18,075 per student and proposed District No. 2 would have only $12,967 per student of assessed valuation and still the

student in District No. 2 would receive an education equal to that offered by District No. 1. There may be a good explanation, but we do not know what it is.

Nowhere does there appear any explanation of how and why the plan meets the criteria. This must be set out in order that a reviewing state committee or a court, if the matter should go that far, can make any meaningful analysis and a determination that the plan meets the categories of review set out in §9-276.32(c) which limits the court to a determination of whether or not:

> "(i) The agency acted without or in excess of its powers;
>
> "(ii) The decision or other agency action was procured by fraud;
>
> "(iii) The decision or other agency action is in conformity with law;
>
> "(iv) The findings of fact in issue in a contested case are supported by substantial evidence [by the court; not applicable in this case]; and
>
> "(v) The decision or other agency action is arbitrary, capricious or characterized by abuse of discretion."

The court is undertaking this discussion in a further effort to demonstrate the rule of Pan American, supra. That case was cited in Johnson v. Schrader, 502 P.2d 371, 374, and a warning was then issued that a failure to meet the standards of Pan American would make a school district reorganization determination susceptible to the charge that the committee's order is contrary to law. It can also be stated, as already inferred, that the state plan, which will be aborted by this court, even if it were otherwise lawful, would not meet the standards of Pan

American and would be subject to the same criticism as that directed to the county committee plans. Nor will briefs and oral argument substitute for a proper decision and order.

We realize that someone may challenge the necessity of detailed supporting facts for ultimate facts in a noncontested case in the face of §9-276.28, W.S. 1957, 1973 Cum. Supp., of the Administrative Procedure Act, outlining the requirement that in a contested case," * * * Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. * * *" There is no similar requirement in the Administrative procedure Act for non-contested cases.

That requirement may not exist in some non-contested cases and we do not here attempt to decide what they might be, but in the 1969 School District Organization Law, the county committee has the duty to, as part of its plan, set out "* * * a summary of the reasons for the plan; * * *". §21-118(c).

To us, this applies the rule of Pan American, supra, and adopts the requirement of §9-276.28, in school reorganization cases. This was the observation of the court in Johnson v. Schrader, 502 P.2d 371, 374. The plan must show conformity to the statutory criteria of §21-109, and state the reasons the plan conforms not only in that particular, but in order to manifest full compliance with the entire Wyoming School District Organization Law of 1969.

It would seem that by reason of the complexities of Fremont County in its population concentrations, economy, geography, variances of assessed valuation by area, mineral wealth, location of industries, political influences and the presence of an extensive Indian community, it would be a much easier task to satisfactorily explain and

justify a one-district plan. With all of these considerations and the inordinate number of unsatisfactory plans, it is like trying to put together a jig-saw puzzle with parts that do not fit. By this observation, we are not trying to turn ourselves into a super county or state committee. As was said in Johnson v. Schrader, 502 P.2d 371, 374, "Let us make it very clear at this point, no law says Goshen County has to be a single countywide school district," nor does Fremont County.

By the four-district plan proposed by the state committee, District No. 3 would have been made up of three existing districts within the Wind River Indian Reservation, and embracing about one-third of the geographical area of the reservation. It is occupied predominantly, if not totally, by Indians. Its design is centered around the proposition that it would be tailored for the Indian student and in which would be schools fitted to the unique cultures, language, life-styles, spiritual values and religions of the two reservation tribes. It is the contention of the Wind River Indian Education Association that the high schools in Lander and Riverton are unresponsive to these needs, creating social problems, such as alcoholism, arrests and suicides amongst Indian youth, as well as generating a high drop-out rate. It is asserted that any other plan would amount to coercive assimilation, to the detriment of the Indian student. The plan contemplates complete Indian control, directed to the ways of Indians.

However all that may be, the plan's opponents contend that there is not a proper accredited high school on the reservation and there must be one, before such a district can be organized under the definition of a "unified school district" which "means a district supporting at least grades kindergarten or one through twelve under the

control of one board of trustees and administered by one superintendent of schools, that offers an adequate and integrated educational program." §21.1-107(c)

It is challenged by appellants that the district would "support" the high school and that in fact an "adequate" high school is not in existence. The title to the land upon which a makeshift high school is located, was transferred by the Episcopal Church to the Wind River Indian Education Association, Inc., with a "right of reverter in the event at any time hereafter the grantee named therein shall cease to use that real property hereinabove described for the purpose of the maintenance of the 'Wyoming Indian High School'." The United States has appropriated money to assist in the construction of an acceptable facility and more is apparently anticipated. Much of the cost of educating Indians is borne by the United States under The Indian Education Act of 1972. 20 U.S.C. 241, et seq. This is and would be available to not only schools on the reservation, but other public schools in which Indians are being educated.

Appellants' argument that the proposed district does not support a high school is overly technical. The huge support of the United States may be an explanation of why an average assessed valuation per student in the reservation district is out of line with other districts, in which case it would not be bad and explained. Nor does the court believe that it is necessary to have an adequate high school completely in existence as long as there are firm arrangements for one to come into being.

There has been no convincing argument made why a board of trustees should not be made up of Indians, if that is the political complexion in the expanse of the district. The court in this connection finally decides that there would be nothing arbitrary or unlawful about

providing elective courses and supplemental school services directed to meet the needs of Indians as is done to meet the specialized needs of students other than Indians, but has not been convinced by the state plan that its way of going about it has been satisfactorily explained within its decision and order; nor is the court satisfied from the record that the headquarters must be located on the reservation and must be dominated entirely by Indians without regard to the high standards and controlling statutes by which Wyoming schools are governed. It is not enough that the state committee falls back on the answer that its plan must be accepted because of its expertise in education. We recognize that expertise, but cannot blindly accept the proposal without full justification in its decision and order.

Perhaps, there should be some word about the authority of the State of Wyoming to be establishing a school system on the Wind River Indian Reservation, over w! ich the United States has exclusive jurisdiction. By 25 U.S.C. 231, the United States authorized states to exercise school jurisdiction on Indian reservations, but it "shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application." The court is informed through the briefs, that this authority was given, but it remains somewhat a question as to when and how.

There are two tribes on the reservation, the Arapahoe and Shoshone. In the record appears a resolution of the Shoshone Indian tribe which resolves "that the General Council of the Shoshone people support the Shoshone people of School District No. 21 to reject a unified reservation district of School Districts No. 21, 14, 38 and to preserve the right of Shoshone people to determine

their own destiny." By the same resolution, the Shoshone Tribe refused support to the Ethete Resources High School (the Wind River Indian Education Association High School), the controversial school in this proceeding, previously described.

Counsel for the Wind River Indian Education Association in his brief acknowledges that the tribes may withdraw their consent and expel the State. The Shoshone Tribal resolution seems to indicate as much. We need not rule on whether the resolution is in fact a withdrawal of tribal authority if the proposed Indian District No. 3 were to be established. There is a problem of diplomacy facing the county committee, in its future planning. While the case is not in point as to any issue here, Mr. Justice White took perceptive notice in U.S. v. Mazurie, 16 Cr.L. 3033, 3044: __U.S.__, __: __ S.Ct. __, __: __ L.Ed.2d__, __ (decided January 21, 1975), that, " * * * Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory (citing case); they are 'a separate people' possessing 'the power of regulating their internal and social relations. . . .' (citing cases)."

The Joint Business Council of both tribes has endorsed the state committee plan. There is a difference in the nature of the two Councils, however. Each tribe may speak for itself, as the court reads 25 U.S.C. 231. In any event, the State is only on the reservation trying to set up a school system by the grace of the two tribes.

It is concluded that there is no authority in the state committee or any county committee to set up a separate Indian reservation school district, as done. Art. VII, §10, Wyo. Const., states that, "In none of the public schools so established and maintained shall distinction or discrimination be made on account of sex, race or color."

The word "distinction" contained in this section must be given its ordinary meaning. Webster defines that word as follows: "seeming to distinguish", "setting apart from others", "individualizing", "characteristic", "peculiar", "special". This is a special Wyoming constitutional provision pertaining to schools and does not fall under any general constitutional provision, such as the Fourteenth Amendment to the Constitution of the United States, which is directed toward the equal protection of the laws and under which the many school segregation cases are laid. No distinctive school may be established for Indians, by an agency of the State of Wyoming.

Another constitutional impediment, when applied to the facts, interferes with what the state committee was attempting to do. Art. VII, § 1, commands the legislature to provide for the establishment of a "uniform" system of public instruction. The court observes by the state plan that the combination of existing districts 14, 21 and 38 into the proposed Indian Reservation District No. 3 embraces only a total of 922 square miles. That data comes from an exhibit to the state plan. There are a total of 2,947.7 square miles in the entire Indian reservation (2,886,556 acres divided by 640 acres per square mile). Federal and State Indian Reservations, U.S. Department of Commerce, January, 1971, p. 415. Those Indians residing on the remaining portion of the reservation will be served for their education by the other three districts. If the arguments of the Wind River Indian Education Association, Inc. and the state committee that there is a unique requirement for a separate Indian school district operated by and for Indians are valid, there is no explanation as to why the same principle should not be applied to the remaining portion of the Indian reservation, in which undisputed court testimony discloses there

are several hundred Indian families. The decision is arbitrary in that respect.

In this same connection, the state committee has attempted to amend the State Education Code, which only the legislature may do. There is a special provision of the state plan which provides that any Indian student in District No. 3 may, at such student's choice and selection, attend a high school other than that operated by the proposed Indian district, upon the payment of tuition by that Indian school district. This does not solve the problem, however, because there is no uniform provision applying to those Indians residing in other school districts who wish to enroll in the Indian schools. The reciprocal arrangement, however, would not be lawful, either, but it further demonstrates the non-uniformity and arbitrariness of the plan, even if lawful, which it is not.

The Education Code of Wyoming governs enrollment of school district non-residents:

> "§ 21.1-67. (a) Any district which does not maintain a high school shall pay tuition, in addition to transportation or maintenance, for any child resident therein who has successfully completed the course offered therein and desires to attend high school, at any public school within or without the state which the board may designate in the best interests, welfare and convenience of the child.
>
> "(b) The board of trustees of any school district within the state which does maintain a four-year high school shall admit, upon payment of tuition, pupils of districts which do not maintain a four-year high school; provided, that nothing in this section shall be construed to require a district to admit non-resident pupils, when to do so would overcrowd the facilities of the admitting district or in any way

work a definite hardship upon the educational program offered by the admitting district."

"§ 21.1-68. (a) The board of trustees of every school district within the state may pay tuition from the funds of the district for any pupil resident therein who desires to attend school in another district when attendance in such other district would be more convenient or is desirable because of the services available in such other district.

"(b) Any district within the state shall admit pupils resident in other districts of the state, except when such admission shall overcrowd the classrooms of the admitting district. The cost of tuition for such pupil may be paid by the district in which the pupil resides from the funds of such district, and shall be at least the actual cost per pupil for operation of the admitting school for the preceding school year; provided, that no district shall be liable for such payment unless it has previously given permission, in writing, to the enrollment of such pupil."

The state committee cannot willy-nilly depart from the Education Code and direct an unlawful arrangement. As indicated, the schools in which the Indians would enroll, have a voice. The statutes are clear and unambiguous and need not be construed.

It is suggested that the Wyoming State Legislature, now in session, may wish to consider this opinion and review the Wyoming School District Organization Law of 1969. It must be noted that §21.1-113, the authority of the county clerk to call an election for electing the initial board of trustees upon a state plan, expired on January 10, 1972. By this paragraph, the court is not directing the Wyoming State Legislature to do anything in this connection or giving it directions as to how to do it, because that is the business of that branch of govern-

ment. This court has no intention of interfering with the work of that great body.

Reversed and remanded with instructions.

The case is remanded to the Fremont county committee to continue its work in reviewing its previous plans, taking into consideration new facts, along with the sense of this opinion, and submit a plan of organization to the state committee for approval or rejection.

APPENDIX B

IN THE SUPREME COURT OF THE
STATE OF WYOMING

LAWRENCE J. GERAUD, et al., Appellants, (Petitioners below), v. ROBERT G. SCHRADER, et al., Appellees, (Respondents below), and WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., a nonprofit Wyoming corporation, et al., Appellees, (Intervenors below).	No. 4389
ALFRED WARD, et al., Appellants, (Petitioners below), v. ROBERT G. SCHRADER, et al., Appellees, (Respondents below), and	No. 4390 No. 4391

WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., a nonprofit Wyoming corporation, et al.,

Appellees,
(Intervenors below),

and

FREMONT COUNTY VOCATIONAL HIGH SCHOOL DISTRICT and LANDER SCHOOL DISTRICT NO. 1,

Appellants,
(Second Intervenors below).

ORDER DENYING PETITION FOR REHEARING

ORDERED that the Petition for Rehearing in the above entitled case filed by Intervenors-Appellees, Wind River Indian Education Association, Inc., et al., be, and is hereby denied.

Dated this 19th day of March, 1975.

/s/ Rodney M. Guthrie

Rodney M. Guthrie
Chief Justice

APPENDIX C

IN THE
DISTRICT COURT OF FREMONT COUNTY,
WYOMING SEVENTH JUDICIAL DISTRICT

WARD, et al.,
Petitioners,
vs.
SCHRADER, et al.,
Respondents,
and
WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., et al.,
Intervenors.
Civil No. 16307

GERAUD, et al.,
Petitioners,
vs.
SCHRADER, et al.,
Respondents,
and
WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., et al.,
Intervenors.
Civil No. 16342

ORDER

A hearing having been held on the above cause on February 12, 13, 1974, at Lander, Wyoming and oral testimony and exhibits having been admitted because the Court considered the exhibits and testimony material, and oral argument having been held, and the Court being advised in the matter find (sic) that:

The State Committee's Decision and Order dated March 30, 1973 (hereinafter referred to as Decision and

Order) was within its powers; two, the Decision and Order was not procured by fraud; three, the Decision and Order is in conformity with law,; four, that the findings of fact in the Decision and Order are supported by substantial evidence; five, Respondents' Decision and Order is not arbitrary, capricious or characterized by an abuse of discretion.

IT IS HEREBY ORDERED that the State Committee's Decision and Order is hereby affirmed.

Dated this 14th day of February, 1974 at Lander, Wyoming.

/s/ Paul T. Liamos, Jr.
District Judge.

APPENDIX D

[App. D-1]

STATUTORY AND CONSTITUTIONAL PROVISIONS

[Reproductions are of pertinent provisions only.]

UNITED STATES CONSTITUTION

AMENDMENT XIV.–

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[App. D-2]

THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT,

Act of January 4, 1975,
88 Stat. 2203

AN ACT

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human

resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

CONGRESSIONAL FINDINGS

Sec. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that–

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that–

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

Sec. 3. (a) The Congress hereby recognizes the *obligation of the* United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

* * *

[App. D-3]

[25 U.S.C. 231]

The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application. Feb. 15, 1929, c. 216, 45 Stat. 1185; Aug. 9, 1946, c. 930, 60 Stat. 962.

[App. D-4]

JOHNSON O'MALLEY ACT

25 U.S.C. §452. Contracts for education, medical attention, relief and social welfare of Indians.

The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend

under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory. Apr. 16, 1934, c. 147, §1, 48 Stat. 596; June 4, 1936, c. 490, 49 Stat. 1458.

[App. D-5]

SUPPLEMENTAL APPROPRIATIONS ACT, 1974

PUBLIC LAW 93-245; 87 STAT. 1071
[H.R. 11576]

An Act making supplemental appropriations for the fiscal year ending June 30, 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The following sums are appropriated out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Supplemental Appropriations Act, 1974") for the fiscal year ending June 30, 1974, and other purposes, namely:

* * *

CHAPTER IV
DEPARTMENT OF THE INTERIOR

* * *

BUREAU OF INDIAN AFFAIRS
CONSTRUCTION

* * *

That $320,000 shall be available to assist the Wind River Education Association in the construction of facilities at the Ethete, Wyoming, High School:

* * *

[App. D-6]

ARTICLE VII, §10, WYOMING CONSTITUTION,
WYO. STATS. 1957, 1973 CUM. SUPP.

In none of the public schools so established and maintained shall distinction or discrimination be made on account of sex, race or color.

[App. D-7]

WYOMING STATUTES
1957, 1973 Cum. Supp.

Tuition.

§21.1-67. Payment of tuition for children resident in districts which maintain no high school; admission of such children to high schools in other districts.—(a) Any district which does not maintain a high school shall pay tuition, in addition to transportation or maintenance, for any child resident therein who has successfully completed the course offered therein and desires to attend high school, at any public school within or without the state which the board may designate in the best interests, welfare and convenience of the child.

(b) The board of trustees of any school district within the state which does maintain a four-year high school shall admit, upon payment of tuition, pupils of districts

which do not maintain a four-year high school; provided, that nothing in this section shall be construed to require a district to admit nonresident pupils, when to do so would overcrowd the facilities of the admitting district or in any way work a definite hardship upon the educational program offered by the admitting district. * * *

§21.1-68. Payment of tuition where attendance in another district is convenient or desirable; admission of pupils resident in other districts.—(a) The board of trustees of every school district within the state may pay tuition from the funds of the district for any pupil resident therein who desires to attend school in another district when attendance in such other district would be more convenient or is desirable because of services available in such other district.

(b) Any district within the state shall admit pupils resident in other districts of the state, except when such admission shall overcrowd the classrooms of the admitting district. The cost of tuition for such pupil may be paid by the district in which the pupil resides from the funds of such district, and shall be at least the actual cost per pupil for operation of the admitting school for the preceding school year; provided, that no district shall be liable for such payment unless it has previously given permission, in writing, to the enrollment of such pupil.

* * *

[App. D-8]

WYOMING SCHOOL DISTRICT ORGANIZATION LAW of 1969

CHAPTER 6.

School District Organization.

§21.1-105. How chapter cited.—This chapter may be cited as the Wyoming School District Organization Law of 1969. (Laws 1969, ch. 111, §105.)

§21.1-106. Purpose of chapter.—The legislature of the State of Wyoming hereby declares that this chapter is passed to provide machinery for the organization of the school districts in this state whereby school districts can be organized to: provide an improved and more equalized educational opportunity for all of the pupils in the state; provide a wiser and more efficient use of public funds for education by making it possible to reduce the disparity in per pupil valuation among school districts; to allow the initial planning for the organization of school districts under this chapter to be conducted on the local level; generally enlarge the school districts of the state; and eliminate the different types and kinds of school districts that presently exist and replace them with unified school districts as defined in this chapter. (Laws 1969, ch. 111, §106.)

§21.1-107. Definitions.—As used in this chapter, unless the context otherwise requires or unless otherwise specifically noted:

(a) *"Organization of school districts"* or, *"organization of unified school districts"* means the formation of new unified school districts, through alteration of the boundaries of established school districts, and dissolution and abandonment of established school districts by:

(i) The combining of two (2) or more districts;

(ii) The subdivision of one or more districts; and

(iii) The combination of either of the methods mentioned herein.

(b) *"Plan of organization"* means a plan which would place all the territory of a county in one or more unified school districts; it may include provision for establishing a unified district situated in two or more counties.

(c) *"Unified school district"* means a district supporting at least grades kindergarten or one through twelve, under the control of one board of trustees and administered by one superintendent of schools, that offers an adequate and integrated educational program.

(d) *"County committee"* means the county planning committee for the organization of school districts.

(e) *"Trustee residence area"* means a geographical area within a unified school district from which a member or members of the board of trustees of the unified school district is nominated.

(f) *"Effective date of the plan"* means a date on or before January 20, 1972, when a plan of organization shall take effect. (Laws 1969, ch. 111, §107; 1973, ch. 84, §1.)

§21.1-109. Criteria for districts organized after effective date of act.—All districts organized after the effective date of this act [§§21.1-1 to 21.1-289] shall conform to the following criteria:

(a) Unified school districts shall be organized as efficient administrative units considering primarily the education, convenience, and welfare of the children.

(b) The entire state shall be divided into unified school districts, any county which has been delayed by previous statutory exceptions may have until January 1, 1973, to complete its organization.

[Original wording: "The entire state shall be divided into unified school districts, excepting those elementary school districts principally located within the Wind River Indian Reservation and supporting a high school."]

(c) All territory of each unified school district shall be contiguous.

(d) All territory within a unified school district shall be divided into trustee residence areas. Each trustee residence area shall be contiguous. In establishing trustee residence areas, consideration shall be given to school population, general population, and ecology.

(e) In developing plans of organization, the county committees shall consider a ratio of average daily membership to assessed valuation as nearly equalized as practicable among the unified districts in the various counties.

(f) Each plan of organization shall include provisions for educational opportunity and services as nearly equal as possible in all areas of each unified district. (Laws 1969, ch. 111, §109; 1971, ch. 264, §1.)

§21.1-111. **Composition of state committee.**—The state committee shall be composed of the state superintendent of public instruction and the state board of education. (Laws 1969, ch. 111, §111.)

§21.1-112. **Powers and duties of state committee.**—The state committee is hereby empowered and authorized and it shall be its duty:

(a) To appoint a director and such other personnel as may be necessary to assist it in carrying out the powers and duties imposed upon it by this chapter. The compensation of such personnel shall be determined and fixed by the state committee in accordance with the policies of the Wyoming personnel commission and shall be paid in regular monthly installments.

(b) To govern the disbursements of such funds as are provided by law for carrying out the provisions of this chapter. All such disbursements shall be by the procedure and in the manner provided by law for the disbursement of funds of the state.

(c) To aid the several county committees in carrying out the powers and duties vested in and imposed upon the county committees by this chapter, by furnishing such committees with assistance of the employed staff of the state committee and to provide such plans of procedure, standards, data, maps, and other information and services for county committees throughout the state as it appears to the state committee necessary or desirable to carry out the purposes of this chapter.

(d) To receive, file, and consider plans for the organization of unified school districts.

(e) To appoint by May 1, 1969, a county committee in any county in which no county committee is elected as required by this chapter.

(f) To recommend to any county committee such modifications of the plan for organization of the unified school districts of such county as may appear to the state committee more feasible to effectuate the purpose of this chapter.

(g) To review all plans of organization submitted to it and either approve such plans or reject them with reasons

for rejection and recommendations for making the plan acceptable. The state committee must act upon proposals submitted by the county committees and return them to the respective counties within sixty (60) days of the date of their receipt. The state committee shall reject a plan of organization only if it fails to comply with the provisions of this chapter. If a plan is rejected, a county committee may resubmit a modified plan as often as necessary. When a plan of organization becomes an approved plan, the state committee shall make an order establishing the unified school district according to the approved plan of organization; said order shall be the final administrative determination and shall be filed with the county clerk of each county involved within ten (10) days of the time when the plan of organization becomes an approved plan. The order providing for establishment of the unified district shall become effective and binding ten (10) days after it is so filed. (Laws 1969, ch. 111, §112.)

§21.1-113. Reorganization of territory into unified school district by state committee.—If by December 1, 1971, an approved plan has not been filed for any territory in any county or counties, then the state committee is authorized to reorganize such territory into a unified school district or districts or to combine such territory with any contiguous unified district or districts. In such event, the state committee shall by December 20, 1971, designate the number of trustees and the trustee residence areas for such unified school district. The county clerk shall call an election for electing an initial board of trustees on or before January 10, 1972, as if said unified district had been established under section 112(g) of this chapter [§21.1-112(g)]. (Laws 1969, ch. 111, §113.)

§21.1-114. County planning committees—Membership.—(a) By April 1, 1969, the board of trustees of each school district in operation on December 1, 1968, within each county shall elect one (1) registered voter from such school district to be a member of the county planning committee for the organization of the unified school district or districts; provided in those counties with five (5) or less districts, two (2) members shall be elected from each such district. In counties with only one district the board of trustees shall act as the county committee. (b) Each member of the district boundary board shall be an ex officio member of the county committee without voting privileges. (Laws 1969, ch. 111, §114.)

§21.1-118. Same—Powers and duties.—Each county committee shall have the power and it shall be its duty:

(a) To prepare and submit to the state committee before January 1, 1971, a plan of organization conforming to the criteria and procedures specified in this chapter for the organization of a unified school district or districts within the county. Any plan for the organization of unified school districts involving territory located in two (2) or more counties shall be prepared by joint action of three (3) representatives of each county committee and finally approved by each county committee involved.

(b) To hold a public hearing or hearings within the county on the proposal or if desired on the development of the proposal of the county committee for the organization of unified school districts; and at such time to receive and keep a record of testimony. Notice of each such public hearing shall be published in a newspaper of general circulation in the area at least once each week for the two weeks immediately preceding the time set for each hearing. The notice shall contain a statement of the

time and place of the hearing and a brief summary of its purpose. In addition, at least ten days and not more than fourteen days prior to the time set for the hearing, a copy of the notice shall be sent by mail to each school district trustee residing in the area involved in such hearing. A subcommittee composed of not less than three (3) voting members of each county committee involved, may hold any hearing that the county committee is required to hold.

(c) To prepare and submit to the state committee as part of its plan of organization: a name and number of the proposed district; a map showing the boundaries of established school districts and the boundaries proposed under any plan for the organization of unified school districts prepared and submitted in compliance with this chapter; a description of the proposed boundaries aforementioned; recommendations respecting the location of schools, the utilization of existing buildings, allocation of existing indebtednesses, the employment of existing personnel, and the transportation requirements under the proposed plan for the organization of the unified school district; a summary of the reasons for the plan; a record of all hearings; a summary of anticipated improvement in education; and such other reports, records, and materials as may be deemed appropriate.

(d) To include in its plan the number of trustees for any proposed unified school district, which number shall be either five (5), seven (7), or nine (9). The county committee shall provide a specific plan of trustee residence areas for the proposed unified school district and determine the number of trustees to represent each area. The county committee shall include in its plan of organization provision for staggering the length of terms for trustee residence areas as well as for members of the

first board of trustees so that each term will be either one or two or three years in length. Thereafter, all terms shall be for three years.

(e) To advise and cooperate with the county committees of adjoining counties.

(f) To allocate equitably the assets and debts of the districts affected by the plan of organization. (Laws 1969, ch. 111, §118.)

§21 1-123. Old districts to cease to exist.—When members of the board of trustees of the new unified school district assume their duties as herein provided on the effective date of the plan each of the old districts or portions of districts from which the unified district was formed shall cease to exist as a legal entity and the board of trustees of each such former district or districts situated within the new unified district shall cease to function and the terms of office of the members thereof shall thereupon automatically expire. (Laws 1969, ch. 111, §123.)

§21.1-125. Nomination and election of board of trustees; vacancies on board.—(a) Any person desiring to be a candidate for the office of trustee of a unified district formed under the provisions of this chapter shall be a resident of the trustee residence area which he seeks to represent. Such candidate shall be nominated by a petition which shall be signed by at least twenty-five (25) qualified electors of the trustee residence area in which such candidate resides, and an acceptance of such nomination by the candidate. All trustees shall be elected by the electorate of the entire organized unified school district. According to the plan of organization, each trustee residence area shall be entitled to one or more representatives on the board; and the candidate or

candidates nominated from each trustee residence area receiving the largest number of votes shall be elected.

§21.1-128. Appeal from decision of state committee.—An appeal may be taken from any final decision of the state committee by any citizen or taxpayer of the territory involved to the district court of any county in which the proposed new district lies. Such appeal shall be heard promptly and shall be governed by the Wyoming Administrative Procedure Act [§§9-276.19 to 9-276.33] and the Wyoming Rules of Civil Procedure. Pending the appeal provided by this section, the board of trustees of the unified school district shall continue to act as if the appeal had not been taken unless otherwise ordered by the court to which appeal is taken. (Laws 1969, ch. 111, §128.)

* * *

§21.1-132. Elementary school advisory boards.—(a) Whenever an elementary school within any unified school district is located twenty (20) road miles or more from the nearest town or city that is the population center of such unified district and whenever fifty percent (50%) of the parents of children attending such elementary school agree, they may call a meeting at the school for the purpose of electing an advisory board of three (3) members for a term of one (1) year.

(b) The advisory board may aid and advise the board of trustees of the unified district in all matters concerning the operation of the elementary school. Such advisory board dhsll have the right to present grievances and recommendations at any regular meeting of the board of trustees of the unified district.

(c) The members of such advisory board may be elected and reelected from time to time without compliance with the election provisions of this code. (Laws 1969, ch. 111, §132.)

§21.1-134. County boards of trustees to have powers and duties of former county committees; further organization of school districts.—When all of the territory of the state is included in unified school districts, the board of trustees of the unified districts in each county shall constitute a committee with the powers and duties of the former county committees. Such committee may submit to the state committee plans proposing organization of school districts which conform to the criteria and procedures set forth in this chapter, provided that the time limits provided by this chapter shall not apply to any such proposed further organization. (Laws 1969, ch. 111, §134.)

[App. D-9]

AMENDMENT TO SCHOOL DISTRICT ORGANIZATION LAW

ORIGINAL HOUSE
BILL NO. 132

ENROLLED ACT NO. 33, HOUSE OF REPRESENTATIVES
FORTY-THIRD LEGISLATURE OF THE STATE OF WYOMING 1975 SESSION

AN ACT to amend W.S. 21.1-107(f), 21.1-109(b), 21.1-113, 21.1-115, 21.1-118(a), 21.1-120 and 21.1-134 relating to organization of school districts; providing additional time for reorganizing nonunified districts; and

providing that further organization may occur as each county plan takes effect.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 21.1-107(f), 21.1-109(b), 21.1-113, 21.1-115, 21.1-118(a), 21.1-120 and 21.1-134 are amended to read:

21.1-107. Definitions. As used in this chapter, unless the context otherwise requires or unless otherwise specifically noted:

(f) "Effective date of the plan" means a date on or before April 15, 1977, when a plan of organization shall take effect.

21.1-109. Criteria for districts organized after effective date of act. All districts organized after the effective date of this act shall conform to the following criteria:

(b) The entire state shall be divided into unified school districts. Any county which has been delayed by previous statutory exceptions may have until April 15, 1977, to complete its organization.

21.1-113. Reorganization of territory into unified school district by state committee. If by April 15, 1977, an approved plan has not been filed for any territory in any county or counties, then the state committee is authorized to reorganize such territory into a unified school district or districts or to combine such territory with any contiguous unified district or districts. In such event, the state committee shall by May 15, 1977, designate the number of trustees and the trustee residence areas for such unified school district. The county clerk shall call an election for electing an initial board of trustees within a reasonable time as if said unified district had been established under W.S. 21.1-112(g).

21.1-115. Same; organization meeting; terms; vacancies. The county clerk shall call the first meeting of the county committee to be held no later than May 15, 1975, for the purpose of committee organization. All members of the county committees shall serve for a term of two (2) years or until a plan of organization has become effective, whichever may last occur. Appointments shall be made by the board of trustees of the district affected upon occurrence of a vacancy for any reason. If a voting member fails to attend two (2) consecutive meetings after due notice and without being excused by the committee chairman, his office shall be declared vacant by the committee.

21.1-118. Same; powers and duties. Each county committee shall have the power and it shall be its duty:

(a) To prepare and submit to the state committee before April 15, 1977, a plan of organization conforming to the criteria and procedures specified in this chapter for the organization of a unified school district or districts within the county. Any plan for the organization of unified school districts involving territory located in two (2) or more counties shall be prepared by joint action of three (3) representatives of each county committee and finally approved by each county committee involved.

21.1-120. Date for initial election of board of trustees of united school district. The plan of organization shall include a date within a reasonable time following the proposal for the initial election of the board of trustees for each proposed unified school district.

21.1-134. County boards of trustees to have powers and duties of former county committees; further organization of school districts. When a plan of organization for a county has been approved by the state committee and

the new trustees have taken office the boards of trustees of the unified districts in that county shall constitute a committee with the powers and duties of the former county committee. The committee may submit to the state committee plans proposing organization of school districts which conform to the criteria and procedures set forth in this chapter, but the time limits provided by this chapter shall not apply to any proposed further organization.

Section 2. This act is effective ninety (90) days after adjournment of the session of the legislature at which it was enacted.

(ORIGINAL SIGNED BY
PRESIDENT AND SPEAKER)
SIGNED BY GOVERNOR
DATE: 2/15/75

[App. D-10]

CIVIL RIGHTS ACT OF 1964 – 42 U.S.C. 2000d

§2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Pub.L. 88-352, Title VI, §601, July 2, 1964, 78 Stat. 252.

[App. D-11]

INDIAN EDUCATION ACT,
Act of June 23, 1972, 86 Stat. 334,
P.L. 92-318, Title IV, 20 U.S.C. 241 aa, *et. seq.*

TITLE IV–INDIAN EDUCATION

SHORT TITLE

Sec. 401. This title may be cited as the "Indian Education Act."

Part A–Revision of Impacted Areas Program
as it Relates to Indian Children

AMENDMENTS TO PUBLIC LAW 874,
EIGHTY-FIRST CONGRESS

Sec. 411. (a) The Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by redesignating title III as title IV, by redesignating sections 301 through 303 and references thereto as sections 401 through 403, respectively, and by adding after title II the following new title:

"TITLE III–FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF INDIAN CHILDREN

"SHORT TITLE

"Sec. 301. This title may be cited as the Indian Elementary and Secondary School Assistance Act'.

"DECLARATION OF POLICY

"Sec. 302. (a) In recognition of the special educational needs of Indian students in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out elementary and secondary school programs specially designed to meet these special educational needs.

"(b) The Commissioner shall, in order to effectuate the policy set forth in subsection (a), carry out a program of making grants to local educational agencies which are entitled to payments under this title and which have submitted, and had approved, applications therefor, in accordance with the provisions of this title.

* * *

[App. D-12]

[25 C.F.R. 33.2]

§33.2 **Public school enrollment.** Enrollment of Indian children in public schools shall be encouraged where such schools are adequate and accessible.

APPENDIX E

[App. E-1]

EXCERPTS FROM ADMINISTRATIVE AND JUDICIAL RECORD

[Resolution (Undated) of Board of Trustees of Elementary School District 21, Submitted to County Committee, R.A. 222]

* * *

WHEREAS provision for local control of schools on the Wind River Indian Reservation is required by the Constitution of the United States (First, Fourteenth and Fifteenth Amendments);

THEREFORE, BE IT RESOLVED that the members of the Board of Trustees of School District #21 (Ft. Washakie) support and recommend the creation of a unified school district on the Wind River Indian Reservation through consolidation of elementary school districts #21 (Ft. Washakie), #38 (Arapahoe) and #14 (Mill Creek).

/s/ Lewis G. Twitchell
Chairman

/s/ Alberta Friday
Treasurer" (Petitioner)

[App. E-2]

[Wind River Indian Education Association Statement before the Fremont County Planning Committee on School District Organization, May 31, 1972 (R.A. 589-590)]

MR. LEEDY: We have a statement from the Wind River Education Association, Incorporated, that they wish to have read into the record. It's dated May 31, 1972, and addressed to the chairman, and reads:

"It is a great disappointment that this final change to the four-district plan for reorganization of Fremont County's school districts institutes a plan which is even worse than the others. Indian people have repeatedly brought to the attention of this committee the special needs of the Indian education in Wyoming only to be met with complete disregard by the committee.

"This is very strong evidence of the discrimination which is so abundant in Fremont County. It appears that certain basic constitutional rights have been abridged by the committee's adoption of this plan.

"First, by educating our Indian youth in white-controlled off-reservation schools these students are being subjected to an environment which is unsuited to their unique educational needs. This has been demonstrated by high drop-out rates, low achievement scores, and instances of discrimination in the past. The right to equal educational opportunities has been denied the students.

* * *

[App. E-3]

[Minutes of State Committee on School District Organization Meeting, July 24, 1972 – Remarks by legal counsel for Wind River Indian Education Association. (R.A. 728-731)]

* * *

Mr. Michael Gross, an Attorney from New Mexico served as spokesman for the group in opposition to the four district plan. Mr.Gross pointed out that the State Committee in rejecting the five district plan presented

previously had recommended that emphasis be placed on the special educational needs of the Indians who live on the Reservation. He stated that not only has the County Committee failed to take the recommendations of the State Committee into consideration, but that the four district plan actually takes away all of the earlier concessions made to the people on the Reservation.

Mr. Gross went on to state his belief, based on legal research and his personal knowledge of what is going on in Fremont County and the wishes of the people living on the Reservation, that the four district plan would seriously violate basic Constitutional rights of the majority of Indians living on the reservation. It would do this by depriving them of equal protection of the law as guaranteed by the 14th Amendment and by depriving them of freedom of speech and free exercise of religion as guaranteed by the First Amendment to the Constitution.

Mr. Gross said when those in opposition to the four district plan refer to discriminatory practices against Indians in the public schools, they are primarily referring to the high schools because the elementary school districts on the Reservation have been able to elect school boards with an Indian majority and so the elementary school districts are controlled by the Indian people. These are generally considered to be making educational progress with the Indian children. The high schools, particularly in Lander and Riverton, have not made such progress.

Mr. Gross pointed out that there is a vast difference between the type of discrimination experienced by blacks and that which is practiced against Indians. Historically, there has been forced segregation of blacks, whereas with Indians the problem is almost the exact opposite. These people have been faced with coersive (sic) assimilation.

The "melting pot" concept expects Indians to be just like the Irish, Germans, Italians or Poles, This can't work and hasn't worked with the Indians whose fundamental roots are so basically different from those of white society.

Mr. Gross went on to say that the four district plan would not only continue to deprive Indian control over the high schools, but it would take away the control they now have over the aforementioned elementary schools. This is extremely important. Because of the ways in which new boards of trustees are to be elected, it would be impossible for the Indians to control their own schools. It is the basic right of Indian people to have the kind of say about the education of their children that the white people have. The four district plan, by taking coersive (sic) assimilation to the nth degree would, to the same degree, conclusively deny Indian people the right to use the education of their children as a vehicle for perpetuating their own views, their own heritage.

* * *

[App. E-4]

[Partial summary of Federal assistance to public school districts in Fremont County on behalf of Indian students. (R.A. 892-894)]

JOHNSON-O'MALLEY
FUNDS EXPENDED—FREMONT COUNTY
By Contract with State of Wyoming*
(Act of 4/16/34, 25 U.S.C. 452)

FY	CONTRACT AMOUNT	ESTIMATED NO. OF INDIAN STUDENTS
1972	125,000	1045
1971	100,000	982
1970	70,000	1069
(1973)	(314,909. Budget request; 125,000 guaranteed)	(1000)

*Until 1961, Johnson-O'Malley program administered by contracts direct to individual school districts; from 1962 through 1967 by a five year contract with Wyoming State Department of Education; 1968, individual contracts with school districts; 1969 to date, via Wyoming State Department of Education.

Source: Resource Coordinator for Indian Education, Fort Washakie, Wyoming.

5 YEARS—PUBLIC LAW 874 PAYMENTS—FREMONT COUNTY

District	1967-68	1968-69	1969-70	1970-71	1971-72
#2 Dubois	-	$ 8,350.00	19,086.00	11,885.00	22,624.00
#6 Pavillion	7,714.00	64,031.00	77,416.00	34,339.00	83,234.00
#9 Jeffrey Cty.	-	-	-	28,571.00	35,906.00
#14 Mill Creek	138,179.00	256,106.00	215,737.00	218,595.00	317,300.00
#21 Fort Washakie	69,435.00	180,241.00	223,744.00	222,991.00	251,237.00
#38 Arapahoe	122,958.00	97,677.00	208,317.00	97,226.00	262,580.00
#LVHS	-	121,905.00	82,486.00	74,291.00	19,279.00

[App. E-5]

[Excerpts from the culminating statement of the State Committee on School District Organization in reference to Indian educational needs in Fremont County. Subsequent failure of the Fremont County Committee for School District Organization to submit a plan in conformity with the State Committee's recommendations and other requirements of the Wyoming School District Organization Law, §§21.1-105 through 21.1-135, supra, led to adoption by the State Committee of the plan in controversy here. (R.A. 937-942)]

REJECTION NOTICE

TO: Members of the Fremont County Committee

FROM: State Committee for School District Organization

SUBJECT: Rejection of the Fremont County Plan of Organization submitted to the State Committee on November 11, 1972 and taken under advisement on that date.

Pursuant to Section 21.1-112(g) of the Wyoming Education Code of 1969, the Plan of Organization providing for a county unified school district for Fremont County is hereby rejected.

* * *

(d) At the Public Hearing held by the County Committee on November 9, 1972 at Pavillion, Wyoming, the following objections were presented on the one (1) district plan. Mr. Michael Gross, referred to above, stated that the Wind River Indian Reservation objected to the plan on five constitutional grounds. One of which was

that the Indians have a right to a unified school district on the Reservation. (p. 10, public hearing of November 9, 1972).

* * *

Mr. Michael Gross, referred to previously, pointed out that the trustee residence areas did not insure Indians would be represented on the school board. Mr. Silas Lyman, Superintendent of School District 14, Fremont County, stated that there is no assurance that the Indian people will have any representation on the school board.

* * *

3. Although the plan of organization on page 11, discusses what has been done in the past by school districts in Fremont County to meet the educational needs of the Indian children on the Reservation, no special emphasis is placed upon the educational needs and opportunities of those children residing in the Indian Reservation districts now known as Districts No. 21, Fort Washakie; No. 17 Ethete; and No. 38, Arapahoe, in the plan of organization.

At the informal hearing on November 11, 1972 before the State Committee Mr. Redman of the Wind River Indian Association stated that this Association was opposed to the one (1) district plan because it denied equal educational opportunities to the Arapahoe students. Mr. Tom Shakespear stated that the one district plan will provide for no voice in the management of Indian students by Indians. Mr. Silas Lyman, referred to earlier stated that the one (1) district plan does not take into consideration the special needs of the Indian children in Districts 14, 21 and 38.

Pursuant to Section 21.1-112(g) of the Wyoming Education Code of 1969, the State Committee on School

District Organization makes the following recommendations which would make a plan of organization acceptable.

B. RECOMMENDATIONS FOR MAKING PLAN ACCEPTABLE

1. It is recommended that the Fremont County School Planning Committee consider a plan of organization which reorganizes Fremont County into three (3) unified school districts. Said plan must provide a secondary school on the reservation, designed to meet the needs of the Indian children. All Indian children should be given the opportunity of attending the secondary school of their choice, with all tuition being borne by the school district in which they reside.

2. It is further recommended that the Indian people have control over the operation and management of the educational program for Indian children.

3. The State Committee on School District Organization reiterates its direction that the County Committee document the special educational needs of Indian children and how they will be provided for.

* * *

Dated this 20th day of November, 1972 at Casper, Wyoming.

/s/Jes R. Jessen
Jes R. Jessen, Chairman

/s/Harriet E. McNeil
Harriet E. McNeil, Secretary

[App. E-6]

[Court index in case no. 16307 page 23, filed April 27, 1973] (insofar as pertinent)

IN THE DISTRICT COURT
OF FREMONT COUNTY, WYOMING,
SEVENTH JUDICIAL DISTRICT

ALFRED WARD, et. al.,
PETITIONERS

vs.

ROBERT SCHRADER, et. al.,
RESPONDENTS.

Civil No. 16307

MOTION FOR INTERVENTION

* * *

B. The public secondary schools of Fremont County as presently organized and located do not provide equal educational opportunities for Applicants or their children and those they represent, in that:

1. Said schools are not and cannot be controlled by Indians and do not and cannot provide parents of Indian students meaningful opportunities for involvement in their childrens' educations;

2. Said schools discriminate against Indian students in ways including but not limited to: bias of teachers against Indian students; the general absence of Indian teachers and administrators; the general unsuitability of curricula and teaching methods for Indian students; the

general unavailability of opportunities for Indian involvement in extra-curricular activities, especially athletics;

3. Said schools have produced wide-spread disparities in achievement levels of Indian students as compared with non-Indians, disparities in comparative rates of drop outs, disciplinary and emotional problems between Indian and non-Indian students;

4. The location of said schools off the reservation and in areas not close to Indian population centers contributes to an alienation of the parents and Indian community from said schools and is a principal reason for the educational failures of those schools with regard to Indian students.

* * *

A. If Petitioners prevail, the influence in and control of the three reservation elementary schools now controlled by boards of trustees with Indian majorities will be jeopardized: those schools will come under control of a school board or boards elected by residents of districts which are substantially non-Indian and thus inherently unrepresentative of Indians.

B. If Petitioners prevail, Applicants' children and those of the class they represent will continue to experience unequal and inferior educational opportunities in secondary schools.

* * *

WHEREFORE, Applicants pray this court to:

A. Enter an order authorizing the intervention of Applicants as third party respondents and permit them to file their Answer in Intervention;

B. Provide such other and further relief as may be appropriate and necessary to protect the interests of Applicants and the class they represent.

Dated: April 27, 1973.

RESPECTFULLY SUBMITTED:

/s/ H. Clandillon Phibbs, II
H. Clandillon Phibbs, II
Attorney for Applicants
Box 167, Wilson, Wyoming 83014

/s/ Michael Paul Gross
Michael Paul Gross
Attorney for Applicants
424 Camino del Monte Sol
Santa Fe, New Mexico 87501

[App. E-7]

[Court index to case no. 16307 page 392, filed February 4, 1974]

IN THE DISTRICT COURT OF
FREMONT COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT

WARD, et. al.,
PETITIONERS,

vs. No. 16307

SCHRADER, et. al.,
RESPONDENTS,

and

THE WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., et. al.,
INTERVENORS.

GERAUD, et. al.,
PETITIONERS,

vs. No. 16342

SCHRADER, et. al.,
RESPONDENTS,

and

THE WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., et. al.,
INTERVENORS.

INTERVENORS' TRIAL BRIEF
(insofar as pertinent)

Fremont County School District No. 3 is Constitutional; it is Affirmatively Required to Redress Conditions Of Unequal Educational Opportunities For Indian Children.

I.

The State Committee has not Classified Anyone by Race, Religion, Ethnic Origin or any Other Invidious Category nor will any Schools in Fremont County be Racially or Ethnically Isolated by Reason of its Actions. Since no one is aggrieved or Injured in fact by the Decision and Order the Claims of Segregation Should be Dismissed for Lack of Standing.

1. There is No Element of Coerced Attendence At Racially Isolated Schools in The Plan Of Reorganization.
2. The Reservation District, So-Called, Is The Sine Qua Non Of The Neighborhood School Policy Favored By The Tenth Circuit Court of Appeals And Serves As A Crucial Example Of A Locality In Need Of Local School Control, A Policy Increasingly Favored By The Supreme Court As Well.
3. Petitioners (Those Residing in Fremont County School District No. 3) Will Actually Benefit From The Plan Of Reorganization.
4. A Most Important Effect Of The Plan Of Reorganization Is Expected To Be The Return to Local Schools Of About 90 Indian Students From The Wind River Reservation Who For Many Years

Have Sought Education Outside Of Wyoming In Undersirable Federal Indian Boarding Schools.

II.

It Was Proper For The State Committee and Indeed Incumbent on it to Take Into Account the Existence of a Federal Indian Reservation in Fremont County and of the Laws and Policies of the Federal Government in Relation to it.

1. The Plan Of Reorganization Is In Conformity With The Supremacy Clause Of The United States Constitution.
2. Congress Has Expressly Sanctioned Creation Of A Public School District On the Wind River Reservation.
3. In Exercising School Jurisdiction On The Wind River Indian Reservation The State Of Wyoming Acts As Congress' Agent In Exercising Fiduciary Responsibilities To Indians And Must Therefore Act To Safeguard Indians' Best Interests.
4. The Special Relationship Between Indian Tribes And The United States Has Led To Enactment Of Laws Classifying Indians By Race. These Laws Are Considered Benign In Their Impact And Thus Not Violative Of Any Constitutional Provision. To The Extent The State Committee's Action Recognized The Existence Of The Wind River Reservation As A Unique Governmental Entity In Fremont County With Special Education Needs, Its Actions Must Also Be Viewed In This Way.

III.

Far From Discriminating Against Indians, The Plan of Reorganization Represents An Historic Effort by the State of Wyoming to Provide Indians With Equal Educational Opportunities.

1. Under Previous School Systems, Especially For High School Aged Children, Indians in Fremont County Have Suffered From Unequal Educational Opportunities. In Recognizing This Fact And Taking Action Suited To The Unique Circumstances And Needs Of Indians In Fremont County, The State Committee Has Moved To Provide Them With Equal Educational Opportunities, In Keeping With The Mandate Of The Wyoming Education Code.
2. The State Committee's Action Was Also Affirmatively Required To Protect Indians' Political Rights.

IV.

The State Committee's Actions Were Also Justified As A Means Of Guaranteeing Indians Their Rights Under the First Amendment To The United States Constitution.

Dated: January 31, 1974.

Respectfully submitted,

/s/ H. Clandillon Phibbs, II
Attorney for Intervenors.
Box 1082
Jackson, Wyoming

/s/ Michael P. Gross
Attorney for Intervenors
424 Camino del Monte Sol
Santa Fe, New Mexico 87501
87501

[App. E-8]

[Legislative history of The Supplemental Appropriations Act for Fiscal Year 1974, Chapter IV, Bureau of Indian Affairs Appropriations, Construction, January 3, 1974, 87 Stat. 1071, P.L. 93-215. (Hearing Record, pp. 705-706).]

ETHETE, WYO., HIGH SCHOOL

Senator McGee has several questions about funds for the Ethete High School on the Wind River Reservation. Please answer them for the record.

[The information follows:]

QUESTIONS BY SENATOR McGEE

ETHETE HIGH SCHOOL

Question. During hearings on the U.S. Department of Interior Appropriations for fiscal year 1974, I urged the Interior Appropriations to approve initial construction funding for the Wyoming Indian High School at Ethete, Wyoming. Although the Subcommittee did not approve my full request, $320,000 was allocated in planning monies by the Subcommittee. There was a misunderstanding about specific authorizing language and my request for the $320,000 was deleted from the Interior Appropriations bill. Is the Bureau prepared at this time to submit the necessary language which would allow the

Subcommittee to approve the $320,000 in planning funds for construction of a school facility for the Wyoming Indian High School at Ethete?

In my initial request for funds, I noted the independent school was presently being funded at a level of $325,000 per year for an enrollment of 80 students. This limited the educational program to meeting the needs of those students who have experienced learning difficulties in the public school districts off the reservation. The anticipated enrollment for the new high school is 300-400 students once facilities are available to handle such a large number.

I had also noted the Wyoming State School District Reorganization Committee approved a plan establishing a unified school district on the Wind River Indian Reservation with the Ethete school to serve as the high school for the new district. I believe the State of Wyoming is to be commended for recognizing the need for a unified district on the reservation and the uniqueness and necessity of an Indian-controlled education program on the reservation. I want to insure the success of this program. Therefore, my question is whether the Bureau of Indian Affairs feels as strongly as I do about meeting this need, and if so, is the Bureau prepared to see this program continues to receive adequate funding at both the educational and construction levels?

Answer. The Bureau has no authority to request funds for the construction of a public or private school which is not to be under the jurisdiction of the Federal Government. On many occasions in the past the Congress has added funds to assist public school districts and independent school boards in the construction of facilities mainly for the benefit of Indian children. In each

instance, special language has been included in the appropriation language which makes it possible for the Bureau to transfer these funds to the public school district or independent organization designated. If the Congress so desires to assist the Wind River Education Association the following language would serve as a directive to the Bureau:

> "That not to exceed _____ shall be for assistance to the Wind River Education Association for the construction of the Ethete school as a part of the unified school district on the Wind River Indian Reservation."

It is our understanding that the $320,000 mentioned is only a small portion of a total construction estimate of $3.1 million and it should be noted that the Bureau has no authority to commit or request additional funds in the future.

Inasmuch as this school has been designated as the high school for the new unified public school district on the Wind River Reservation, funding should be provided, for operation and construction, through the Bureau's Johnson-O'Malley program, P.L.'s 815, 874 and the recently passed 92-318 administered by the Department of Health, Education and Welfare, and the State of Wyoming.

[App. E-9]

Filed August 26, 1974

PETITIONERS' REPLY BRIEF
IN THE SUPREME COURT OF WYOMING

Appeal Nos. 4389, 4390, 4391

ALFRED WARD, et al.,

Appellants-Petitioners,

v.

ROBERT SCHRADER, et al.,

Appellees-Respondents,

and

THE WIND RIVER INDIAN EDUCATION ASSOCIATION, INC., a nonprofit Wyoming corporation, et al.,

Appellees-Intervenors.

BRIEF OF APPELLEES–INTERVENORS
(insofar as pertinent)

ARGUMENT

I APPELLANTS LACK STANDING TO CONTEST THE FORMATION OF FREMONT COUNTY SCHOOL DISTRICT 3

VII THE SUPREMACY CLAUSE REQUIRES WYOMING TO TAKE ACCOUNT OF THE FEDERAL INDIAN RESERVATION IN FREMONT COUNTY AND THE LAWS AND POLICIES OF THE FEDERAL GOVERNMENT IN SUPPORT OF IT

* * *

VIII FREMONT COUNTY SCHOOL DISTRICT 3 IS CONSTITUTIONAL

* * *

IX FREMONT COUNTY SCHOOL DISTRICT 3 IS AFFIRMATIVELY NEEDED TO REDRESS CONDITIONS OF UNEQUAL EDUCATION OPPORTUNITIES FOR INDIAN CHILDREN

A. Under Previous Systems Indians In Fremont County Have Suffered From Unequal Educational Opportunities. Affirmative Action Is Required To Accord Them Their Rights Under The Fourteenth Amendment To The United States Constitution And Relevant Portions Of The Constitution of Wyoming

B. The State Committee's Action Was Also Affirmatively Required To Protect Indians' Political Rights Under The Fifteenth Amendment To The United States Constitution

C. Finally, The State Committee's Action Is Vitally Needed To Guarantee Indians Their Rights Under The First Amend-

ment To The United States Constitution

Respectfully submitted:
Counsel for Intervenors-Appellees

/s/ H. Clandillon Phibbs, II
Box 1082
Jackson, Wyoming 83001

/s/ Michael P. Gross
Michael P. Gross
Box 483
Henniker, New Hampshire 03242

[App. E-10]

PETITION FOR REHEARING
AND BRIEF IN SUPPORT OF PETITION

[Filed March 5, 1975]

IN THE SUPREME COURT OF THE
STATE OF WYOMING

* * *

PETITION FOR REHEARING

Intervenors-Appellees Wind River Indian Education Association, Inc., et al., by and through counsel, respectfully apply by petition to this Court under Rule 14 for rehearing of the above-styled appeals and as grounds therefor state that this Court reached erroneous legal

conclusions, overlooked several important questions and failed to consider portions of the Record on Appeal of importance to its decision, all relative to proposed District 3 in the State Committee's four district plan for Fremont County. More particularly, the grounds for this petition are:

1. The Court erred in ruling that ". . . there is no authority in the state committee or any county committee to set up a separate Indian reservation school district, as done. Art. VII, sec. 10" (Decision, p. 13):

A. The state committee made no distinction based on race or color in establishing proposed District 3; the Court's implication that the Committee did overlooks specific proof in the Record on Appeal to the contrary.

B. The Court's conclusion in regard to Art. VII, sec. 10 fails to consider the implications, especially for determining the facts of this matter, of P.L. 93-638, "The Indian Self-Determination and Education Assistance Act," January 4, 1975.

* * *

WHEREFORE, Intervenors-Appellees respectfully pray for an order granting a rehearing in this matter on the grounds above and for modification and clarification of this Court's decision of February 7, 1975 to reflect the considerations put forward here.

Date: March 5, 1975

Respectfully submitted:
Counsel for Intervenors-Appellees

/s/ H. Clandillon Phibbs

H. Clandillon Phibbs
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Jackson, Wyoming 83001

/s/ Michael P. Gross

Michael P. Gross
Box 483
Henniker, New Hampshire
03242

* * *

BRIEF IN SUPPORT OF PETITION FOR REHEARING

Statement of the Case

* * *

Argument

1. *Art. VII, sec. 10, Wyoming Constitution*

The Court's remarks concerning Art. VII, sec. 10, *supra,* assume that the state committee attempted to establish a separate Indian reservation school district *as such.* With all due respect and deference, we submit that the Court misconstrues the Record on Appeal. At no time in this reorganization or appeal have the state committee or Intervenors ever contended that the State of Wyoming must or even should create any Indian school district simply because of the race or color of the people involved. Nor is there any evidence suggesting that such was done. Quite the contrary. The appellees' contentions have uniformly been that educational considerations alone require schools for people living on the Wind River Reservation close to their homes and under their control. In reaching this educational conclusion the state committee relied on statements from residents

of the reservation and from experts, including the superintendents of elementary districts 14 and 21 on the reservation (R.A. 445, 447) plus nationwide surveys, most especially the Report of the Special Senate Subcommittee on Indian Education found in the Record in Appeal No. 4390 at page 597. It also relied on its own expertise developed in part by close association with Indian education in the past brought directly to the committee's attention through repeated reports of adverse educational conditions for Indians in Fremont County from the state department's Coordinator for Indian Education whose annual reports on Johnson O'Malley (a Federal Indian education program in public schools) were before the state committee in its dual capacity as State Board of Education. This Court overlooked the Coordinator's compelling comments and recommendations regarding the situation, such as these from the 1971 Report:

> The problems of education for Indian children in Wyoming are in many ways similar to the problems of rural citizens of our State and similar also to the problems of rural Indians in other states. . . . The organization of the local school systems serving the Wind River Reservation contributes to many of these problems.

(R.A., p. 597, Appeal No. 4390).

Just as important to this important and sensitive constitutional issue are the findings and recommendations of the United States Congress embodied in P.L. 93-638, "The Indian Self-Determination and Education Assistance Act," January 4, 1975. These considerations ought to be weighed by the Court in reaching final conclusions about the meaning of Art. VII, sec. 10. Congress' findings and policies reinforce the evidence in this Record concerning the overriding educational need for responsive

school systems for Indians. That act's very title bespeaks a purpose "to provide *maximum* Indian participation in the Government and education of the Indian people . . . to support the *right* of Indian citizens *to control their own educational activities*. . ." (emphasis added). The act goes on to record these findings:

> Sec. 2(b)(3) Parental and community control of the educational process is of crucial importance to the Indian people.

And very significant in light of Congress' previous Indian termination policy:

> Sec. 2(a)(2) Indian people will never surrender their desire to control their relationships both among themselves and with the non-Indian governments, organizations and persons.

In its Declaration of Policy the act states:

> Sec. 3(a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

A principal influence in adopting this policy was the President's Message to Congress on Indian Affairs, July 8, 1970:

> One of the saddest aspects of Indian life in the United States is the low quality of Indian education. . . . Again, at least a part of the problem stems from the fact that the Federal government is trying to do for Indians what many Indians could do better for themselves. . . .

> . . . Consistent with our policy that the Indian community should have the right to take over the control and operation of federally funded programs, we believe every Indian community wishing to do so should be able to control its own Indian schools. This control would be exercised by school boards selected by Indians and functioning much like other school boards throughout the nation. (Message, p. 5, Appeal No. 4390, at 597)

* * *

These factors clearly suggest the kind of distinction the state committee did make. In light of the educational needs demonstrated (at least to the state committee's satisfaction), the distinctions made in proposing District 3 cannot fairly be said to have been based on race or color. Rather they have to do with substantive considerations relating to the State's attempt to provide equal treatment for these students in keeping with State law and Federal Indian policy. *Morton v. Mancari*, 417 U.S. 535 (1974). Where a constitutional basis exists for making a distinction and the State through convincing evidence demonstrates that it is that constitutional basis, and not a possibly overlapping unconstitutional one, which undergrids its action, then it is error for the Court to assume that the State really acted on basis of the unconstitutional consideration. Decisions of the State in circumstances of this kind deserve a heavy presumption of validity. *Marathon Oil Co. v. Welch*, 379 P.2d 832 (Wyo. 1963)

2. *Equal Protection and Federal Education Law*

A fundamental aspect of the situation on the Wind River Reservation, amply supported in the Record, is the absence of a public high school with attendant educa-

tional deprivations. Certainly this Court will agree that where equal services are not provided to a distinct racial or ethnic group by the State school system and no valid reason exists for the lack of service, that group is denied basic rights under the Wyoming and United States Constitutions. Yet that is the situation here. The Wind River Reservation, especially in its populated core (see section 4) exhibits all the indicia of other Wyoming communities which have been provided with their own public high schools. There is geographic isolation, distinct culture, unique history, other governmental units, and economic relationships to support the notion that were this not an Indian community no question would be raised concerning the propriety of placing a school district there. Most importantly, there is population. Evidence in the Record suggests that a public high school on the Reservation as proposed would have an enrollment approaching that of the larger high schools in the state, 350-450 students. (R.A. 217, 543) This number is greater than fourteen existing Wyoming high schools. (R.A. 218)

To the extent this Court's reading of Art. VII, sec. 10 forbids placement of a high school on the Reservation (or the necessary precondition for one given the situation, a separate school district) in these circumstances, it violates Federal law, 42 U.S.C. 2000d, 45 CFR sec. 80.3, and the Equal Protection Clause of the Fourteenth Amendment, U.S. Constitution. * * *

* * *

The Court's reading of Art. VII, sec. 10 amounts to a requirement of identical treatment for everyone regardless of need. That "color blind" approach has itself been held discriminatory under the above statute and regulations in *Lau v. Nichols,* 414 U.S. 563 (1974). Similarly, seemingly non-discriminatory "color blind"

state laws have been held violative of the Fourteenth Amendment's Equal Protection Clause where their effect has been to perpetuate prior state-imposed racial discrimination. *North Carolina State Board of Education v. Swann,* 402 U.S. 43 (1971); *McDaniel v. Barresi, Jr.,* 402 U.S. 39 (1971). Additionally, even if the Court did not intend to forclose all structural solutions to the Indian education problems in Fremont County, it has nonetheless left Art. VII, sec. 10 in ambiguous limbo as regards Elementary Districts 14, 21, and 38, all presently Indian controlled and all located within the exterior boundaries of the Wind River Reservation. (In the entire course of this involved reorganization no one has objected to the presence, structure or enrollment of those districts. Transcript of Hearing, pp. 166 and 213.)

* * *

In addition to violating Federal law, Wyoming's present system of coercive assimilation for educating Indian high school students from the Wind River Reservation violates their Equal Protection rights as well. The significance of such discrimination is to place on the State an affirmative duty to eliminate the unequal treatment. *Green v. County School Board,* 391 U.S. 430 (1968). But by construing the State Constitution so as to prevent state school authorities from making "distinctions" based on Indian children's "color" or "race" the Court deprives the State of the only means available for carrying out redress. This is unconstitutional. If those suspect factors have been the distinguishing characteristics of previous discrimination, then the affirmative duty of *Green* can be fulfilled only by noting a child's "race" or "color" in devising a remedy. *North Carolina State Board of Education v. Swann,* 402 U.S. 43 (1971): "Just as the race of students must be considered in determining whether

a constitutional violation has occurred, so also must race be considered in formulating a remedy."[2]

WHEREFORE, Intervenors-Appellees respectfully pray for an order granting their Petition for Rehearing and for such other and further relief, including modification and clarification of its prior decision in this matter to take account of the new considerations presented here, as to the Court seems just.

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[2] The first sentence of the North Carolina statute at issue in Swann is of note in relation to Art. VII, sec. 10: "No student shall be assigned or compelled to attend any school on account of race, creed or color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins."

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM

No. 74-1568

Wind River Indian Education Association, Inc., et al.,
Petitioners,

vs.

Alfred Ward, et al.,
Respondents.

BRIEF OF RESPONDENT WYOMING STATE COMMITTEE FOR SCHOOL DISTRICT ORGANIZATION IN SUPPORT OF WIND RIVER INDIAN EDUCATION ASSOCIATION'S PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

Respondent State Committee's order for a public unified school district on the Wind River Reservation was issued for proper educational purposes in response to the special educational needs of Indian students on the Wind River Reservation and is justified under the "neighborhood school" concept, as established in decisions of this Court.

STATEMENT OF THE CASE

This case is concerned with the reorganization of public school districts in the County of Fremont, State of Wyoming, by an agency of the State of Wyoming, Respondent State Committee for School District Organization. Specifically, the case deals with a Decision and Order by Respondent herein to create a public unified school district (kindergarten through grade twelve) on the Wind River Reservation. The enrollment in this unified school district would be predominately Indian. The Order of the Respondent Committee is based upon facts that Indian students on the Wind River Reservation have special educational needs and a unified school district on the Reservation best considers the education, convenience and welfare of the Indian students in that area. The creation of a public unified school district would hopefully correct educational inadequacies in public education afforded Indian students. The goal of Respondent State Committee is to provide those Indian students with an education that would enable them to live, work and function in society.

Respondents herein are members and former members of the Wyoming State Committee for School District Organization (hereinafter referred to as the State Committee). Present members include: Robert G. Schrader, Wyoming State Superintendent of Public Instruction (an elective office), Katherine Townsend, Edward Hunter, Wayne Vanderpoel, Jack Pearson, and Lynn Simons. Former Committee members include: Vernon Delgado, Harriet McNeil, Jes R. Jessen, and Dan Kinnaman. Wyoming law provides that members of the State Committee are also members of the Wyoming State Board of Education, with the exception of State Superintendent Schrader, who is an ex-officio member.

In 1969 the Fortieth (40th) State Legislature enacted the Wyoming Education Code of 1969. Chapter 111, Session

Laws of Wyoming 1969; W.S. 21.1-1 through 21.1-289. This action constituted a comprehensive codification and revision of laws in Wyoming relating to elementary and secondary public education. Contained within the Code is a statutory procedure for the reorganization of public schools into unified school districts — kindergarten through grade twelve. W.S. 21.1-105 through 21.1-135.

The procedure for the organization of schools may be briefly summarized as follows: In 1969 a county planning committee for the organization of school districts (hereafter referred to as County Committee) was formed in each of Wyoming's twenty-three (23) counties. W.S. 21.1-107(d). The County Committee's duties are set out in W.S. 21.1-118. A County Committee was to submit a plan of organization to the Respondent State Committee for approval or rejection. This plan would combine two or more school districts, subdivide one or more school districts or combine the foregoing. The plan would provide for at least one or more unified school districts in the county.

The Respondent State Committee could either accept or reject the plan or organization. W.S. 21.1-112. If the plan was approved, the State Committee would enter an Order bringing the school district or districts into existence. If the plan was rejected, the Respondent would remand the matter to the County Committee with recommendations for making the plan acceptable. When reviewing a plan, the State Committee would determine whether it (the plan) met the statutory criteria for school organization found in W.S. 21.1-109. **Johnson v. Schrader**, 507 P. 2d 814 (Wyo. 1973). The State Committee was overseeing and participating in all school reorganization in the State of Wyoming. Except for Fremont County, all public schools in Wyoming were to be reorganized by January, 1972.

As of this date, all public school districts in the State of Wyoming have been reorganized into unified school districts

except for Fremont County, wherein the Wind River Reservation is located. (The Wind River Reservation was described by Justice Rehnquist in **United States v. Mazurie**, ____ U.S. ____, 95 S. Ct. 710 (January 21, 1975)).

In Fremont County there are sixteen public school districts, three of which are elementary districts located on the Wind River Reservation. These three districts (School District 14 — Mill Creek; School District 21 — Fort Washakie; and School District 38 — Arapahoe) are attended predominately by Indian students. The Shoshone and Arapahoe tribes consented to Wyoming's jurisdiction for school purposes in 1954, and these elementary school districts have been part of the State public school system since that time.

From the beginning of the State school reorganizational process, the three elementary schools on the Reservation were treated differently by the Wyoming Legislature. As enacted, W.S. 21.1-109(b) provided that, "The entire state shall be divided into unified school districts excepting those elementary school districts principally located within the Wind River Indian Reservation and supporting a high school." In 1971, this law was amended to read, "The entire state shall be divided into unified school districts, any county which has been delayed by previous statutory exceptions may have until January 1, 1973, to complete its organization." Chapter 264, Section 1, Session Laws of Wyoming 1971. In 1975, the statute was further amended to extend the date for reorganization to April 15, 1977. Chapter 33, Section 1, Session Laws of Wyoming 1975.

The Fremont County Planning Committee submitted to the Respondent State Committee four (4) plans for the reorganization of its schools. All the plans were rejected. During such process, it became increasingly evident to the State Committee that the Indian students in School Districts

14, 21 and 38 had special educational needs which should be recognized and provided for in any plan of organization. Information provided to the Respondent indicated said problems with a primary emphasis on a drastic drop-out rate of secondary Indian students in the high schools off the Reservation. (School Districts 14,21 and 38 are elementary schools and do not have high schools. High school age Indian students are forced to attend either the off-Reservation high schools in Lander or Riverton, Fremont County, Wyoming, or the out-of-state Federal Indian high schools.)

In November of 1971, the Respondent rejected a plan submitted by the County Committee providing for five (5) unified school districts. Aside from other objections to the plan, the State Committee had become aware of serious educational problems of Indian students through statements and information given and provided by the Wind River Indian Education Association, Inc., the Petitioner in this action. In its rejection of the plan, Respondent recommended that the County Committee in any future plan of organization give special attention to the educational needs and opportunities of those pupils residing in School Districts 14, 21 and 38.

In July of 1972, the State Committee rejected a plan submitted by the County Committee which would have established four (4) school districts in Fremont County. In this proposal the three (3) elementary school districts on the Reservation were not considered as a separate unit but rather combined with other proposed off-Reservation districts. One of the reasons cited by Respondent for the rejection of the plan was that it did not provide for equal educational opportunities in the proposed school districts. One standard in the reorganization criteria is that "Each plan of organization shall include provisions for educational opportunity and services as nearly equal as possible in all areas of each unified school district." W.S. 21.1-109(f). The State Committee

found that the plan did not contain provisions which provided for the special educational needs and opportunities of the students residing in School Districts 14, 21 and 38.

In November of 1972, a plan for one (1) school district for Fremont County was rejected. The reason for the rejection was the size of Fremont County and the difficulty that would result in the administration of such as a single school district. With regard to the special educational needs of the Indians, the State Committee recommended to the County Committee that a plan must provide for a secondary school on the Reservation designed to meet the special needs of Indian children. Further, it was recommended that the Indian people affected have control over the operation and management of the educational program for Indian children. In effect, the State Committee recommended that a unified school district be created on the Reservation.

In March of 1973, the State Committee rejected a plan which would have reorganized Fremont County into six (6) school districts. The plan was rejected by the State Committee because of the difference in the assessed valuation per pupil in the school districts. Respondent's rejection was based upon the fact that one proposed district combined School Districts 14 (Mill Creek) and 38 (Arapahoe) with a resultant assessed valuation per pupil of merely $4,201.00. The disparity is evident when compared with another proposed district having an assessed valuation per pupil of $21,999.00.

The time having lapsed for the County Committee to submit an acceptable plan, the State Committee in March of 1973 entered a Decision and Order reorganizing Fremont County into four (4) unified school districts. The implementation of this Order was enjoined pending resolution of legal issues.

The State Committee's Order would have created a public unified school district composed of School Districts

14 (Mill Creek), 21 (Fort Washakie) and 38 (Arapahoe). There would have been a public secondary school (high school) in the school district. The Order also contained a provision recognizing the special educational circumstances existing in the proposed district, and provided that every secondary student attending school therein be afforded the opportunity to attend the secondary school of his or her choice in Fremont County.

The State Committee's Order was appealed to Fremont County District Court. The Wind River Indian Education Association intervened on behalf of the State Committee's Order as it pertained to the proposed public school district composed of School Districts 14, 21 and 38. The State Committee's Order was upheld by the district court on February 14, 1974.

An appeal was taken to the Wyoming Supreme Court. The Wyoming Supreme Court held that there was no authority in the State or County Committee to set up a separate Indian Reservation school district, citing Article VII, Section 10, Wyoming Constitution. **Geraud v. Schrader**, 531 P. 2d 872 (Wyo. 1975).

ARGUMENT

I.

RESPONDENT STATE COMMITTEE'S ORDER PROVIDING FOR A UNIFIED SCHOOL DISTRICT ON THE RESERVATION WAS ISSUED FOR PROPER EDUCATIONAL PURPOSES IN RESPONSE TO THE SPECIAL EDUCATIONAL NEEDS OF INDIAN STUDENTS AND IS JUSTIFIED UNDER THE "NEIGHBORHOOD SCHOOL" CONCEPT.

There are serious educational problems of Indian secondary students who reside on the Wind River Reservation and

attend high school off the Reservation. The question arises as to how the Respondent is going to be able to resolve these problems.

Respondent State Committee had an integral role in the reorganization of all school districts in twenty-two (22) counties in the State of Wyoming. Respondent's approval of different plans of organization and subsequent orders for implementation were required by W.S. 21.1-112(g), before the new school districts could come into existence. The State Committee's orders were upheld in two (2) different counties by the Supreme Court of Wyoming. **Lund v. Schrader**, 492 P.2d 202 (Wyo. 1971) and **Johnson v. Schrader, supra**.

In Fremont County, within which the Wind River Reservation is located, the Respondent ordered a four-district plan to be implemented. In the judgment of the Respondent, which has expertise in educational matters in Wyoming, four unified school districts met the statutory criteria as set out in W. S. 21.1-109. One of these districts would have been located on the Reservation.

The unified school districts on the Reservation would have combined Elementary School Districts 14 (Mill Creek), 21 (Ft. Washakie) and 38 (Arapahoe). Arapahoe Indian students attend School Districts 14 and 38; Shoshone Indian students are enrolled in School District 21. There is no public high school for any of these three schools. The record in this cause shows that there is not a significant drop-out rate at any of these three schools. The school boards are composed of Indian residents of the respective districts.

The school district on the Reservation, had it come into existence, would have been subject to the same Wyoming laws and Wyoming State Board of Education rules and regulations as other public school districts in the State of Wyoming.

Respondent during the process of attempted reorganization in Fremont County was presented with facts through oral and written statements which illustrated special educational problems of Indian students who attended high schools off the Reservation in Lander and Riverton, Wyoming, and out-of-state Federal Indian schools. This information was part of the record in the case before the Wyoming Supreme Court. Some of those facts demonstrated: a staggering drop-out rate of Indians from the Reservation who attended high school off the Reservation; low achievement rates of these Indian pupils in the high schools off the Reservation; and a very low participation of these Indian students in extra-curricular activities.

The information before the Respondent also showed special educational needs of Indian students. An elucidation of these special needs was given by an expert witness on minority group education, Dr. Donald A. Erickson. In addition, the record will show that the Fremont County Planning Committee, in a plan submitted to Repondent, made a statement to the effect that the County Committee was unable to ascertain what these special educational needs were and was, therefore, incapable of making provision for them in any plan of organization.

Respondents' Decision and Order in Fremont County was an attempt to correct the special problems in Indian education which were known to it. In terms of its statutory mandate, a public school district on the Reservation comported with the criteria for school district organization set out in W.S. 21.1-109. Of importance here is W.S. 21.1-109(f), which provides, "Each plan of organization shall include provisions for educational opportunities and services as nearly equal as possible in all areas of each unified school district." Further, objectives of reorganization are found in W.S. 21.1-106, which provides, "The legislature of the State of Wyoming hereby declares that this chapter is passed to

provide machinery for the organization of the school districts in this state whereby school districts can be organized to: provide an improved and more equalized educational opportunity for all of the pupils in the State."

The Respondent was cognizant of its responsibility to educate "all" of the school age youth in Wyoming. Simply put, Respondents' Order attempted to carry out this responsibility with regard to Indian students.

Respondent believes that the issue of a public high school on Wind River Reservation is important to the reorganization of all schools in Fremont County. Without a definitive ruling on this issue, school reorganization cannot be truly effectuated. There are now three (3) separate elementary school districts on the Reservation. The question arises as to whether these school districts are segregated so as to cause the State of Wyoming to take affirmative action to correct the situation. Respondent requires guidance from this Court. The resolution of this issue is critical not only to Wyoming but to every state which has an Indian reservation within its exterior boundaries wherein public schools are located.

Respondent submits that its Order was reasonable because of the special circumstances. Its Order was for legitimate and desirable educational purposes.

Turning to the constitutional issue of the unified school district on the Reservation, Respondent relies upon **Swann v. Charlotte—Mecklenburg Bd. of Ed.**, 402 U.S. 1 (1971), wherein this Court said:

> "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes." (402 U.S. at 28).

It is therefore desirable that these Indian students should attend the elementary and secondary schools nearest their homes.

In terms of population, geography, and educational objectives, the unified school district is justified.

The Order of Respondent is consistent with the neighborhood school concept. The record is barren of any segregatory intent on behalf of Respondent. **Keyes v. School District No. 1**, 413 U.S. 189 (1973). Rather, the creation of this school district was for sincere educational objectives. In the formulation of such objectives, school authorities have wide discretion. **North Carolina Bd. of Ed. v. Swann**, 402 U.S. 43, 45 (1971).

The decision of the Wyoming Supreme Court would appear to preclude a challenge because it construes a Wyoming constitutional provision. That Court said:

> "It is concluded that there is no authority in the state committee or any county committee to set up a separate Indian reservation school district, as done. Art. VII, Sec. 10, Wyo. Const., states that, 'In none of the public schools so established and maintained shall distinction or discrimination be made on account of sex, race or color.'" (531 P. 2d at 882).

This holding fails to consider several factors. First is whether the pattern or design on behalf of the creating authority is an attempt to fence in or to segregate a race because of invidious racial motives. **Keyes v. School District No. 1, supra,** characterizes this as segregatory intent on behalf of the creating authority. Second is the neighborhood school concept which is accepted by this Court. In other words, the

Wyoming Constitutional provision must be analyzed in terms of federal case law on segregation.

There is one final point which the Wyoming Supreme Court failed to consider in its holding. Nowhere in the decision is reference made to the special status afforded Indians by the United States government and decisions of this Court. Indians are treated differently from other citizens in the United States. Both **Cherokee Nation v. Georgia**, 30 U.S. 1 (1831) and **Worcester v. Georgia**, 6 Pet. 515 (1832), illustrate this point. Chief Justice Marshall in **Worcester** recognized that Indian tribes are independent, distinct communities, thereby recognizing the sovereignty of the tribes. **Worcester v. Georgia**, 6 Pet. at 557. In a recent case before this Court, **United States v. Mazurie,** _____ U.S. _____ (Decided January 21, 1975), Justice Rehnquist, writing for a unanimous court stated:

> "Thus it is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." (95 S. Ct. at 717).

McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973), shows the different aspects of tribes in the Tribal-State relationship. As to employment preferences, **Morton v. Mancari**, 417 U.S. 535 (1974), shows that the classification of Indians as a race for purposes of employment is constitutional.

The Wyoming Supreme Court did not consider the weight of the foregoing authorities when construing the Wyoming constitutional provision. If it had, we submit that the racial characterization of the unified school district on the Reservation would not have been within the prohibitions stated in Wyoming Constitution, Article VII, Section 10. There can be no State constitutional violation in view of the

treatment by the federal government of Indians as a separate race.

Finally, Respondent recognizes that other respondents who support the opinion of the Wyoming Supreme Court might contend that adequate State grounds exist, and, therefore, the petition should be dismissed. Respondent's only comment is that if this is so, the secondary students on the Reservation are without a remedy to correct the educational problems which currently exist. Without clarification from this Court, Respondent is unable to effect the proper education of these Indian students, and for these reasons, Respondent State Committee supports the petition for certiorari.

CONCLUSION

The Respondent State Committee's Order creating a public unified school district on the Wind River Reservation is in the best interests of the Indian students therein. Respondent's Order was for legitimate educational purposes and desirable from a public policy standpoint. Respondent State Committee supports Petitioner's request that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Wyoming entered in this cause.

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